

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

SMART PATH CONNECTIONS, LLC., ( CAUSE NO. 2:22-CV-296-JRG  
)  
Plaintiff, ( )  
vs. ( )  
NOKIA CORPORATION, ( ) MARSHALL, TEXAS  
et al., ( )  
Defendants. ( ) APRIL 4, 2024  
8:30 A.M.

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VOLUME 4

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TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP  
UNITED STATES CHIEF DISTRICT JUDGE  
and a jury

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1 THE COURT: Be seated, please.

2 Are the parties prepared to read into the record those  
3 items from the list of pre-admitted exhibits used during  
4 yesterday's portion of the trial?

5 MR. BENNETT: We are, Your Honor.

6 THE COURT: All right. Please go to the podium and  
7 offer that rendition into the record.

8 MR. BENNETT: Yesterday in trial plaintiffs used the  
9 following exhibits: Defense Exhibit 4; Defendant's Exhibit  
10 9a; Defendant's Exhibit 9b; Defendant's Exhibit 9c; Joint  
11 Exhibit 1; Joint Exhibit 2; Joint Exhibit 3; Joint Exhibit  
12 10d, as in dog; Joint Exhibit 17; Joint Exhibit 24a; Joint  
13 Exhibit 33; Joint Exhibit 44a; Plaintiff's Exhibit 5;  
14 Plaintiff's Exhibit 8; Plaintiff's Exhibit 17; Plaintiff's  
15 Exhibit 18; Plaintiff's Exhibit 21; Plaintiff's Exhibit 24;  
16 Plaintiff's Exhibit 28.

17 THE COURT: All right. Is there any objection to  
18 that from Defendant?

19 MR. HAYNES: No objection, Your Honor.

20 THE COURT: All right. Does Defendant have a  
21 similar rendition to offer.

22 MS. KYRAZIS: Yes, Your Honor. Defendants offer for  
23 entry: Joint Exhibit 5, Joint Exhibit 14b, Joint Exhibit 19e,  
24 Joint Exhibit 27a, Defendant's Exhibit 1, Defendant's Exhibit  
25 4, Defendant's Exhibit 34, Defendant's Exhibit 35.

1 THE COURT: All right. And would you identify  
2 yourself for the record, counsel.

3 MS. KYRAZIS: Apologies, Your Honor. Sloane  
4 Kyrazis.

5 THE COURT: Any objection to that offered by the  
6 Defendant?

7 MR. BENNETT: No objection, Your Honor.

8 THE COURT: All right. Mr. Haynes, are you prepared  
9 or is Defendant prepared to call its next witness?

10 MR. HAYNES: We are, Your Honor.

11 THE COURT: All right. Let's bring in the jury  
12 then.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: Good morning, ladies and gentlemen.  
15 Welcome back. It's good to see you. Please have a seat.

16 We'll continue with the Defendant's case in chief.

17 Defendant, call your next witness.

18 MR. HAYNES: Defendant calls Dr. Sandeep Chatterjee.

19 THE COURT: All right. Doctor Chatterjee, if you'll  
20 come forward and be sworn, please.

21 (Whereupon, the oath was administered by the Clerk.)

22 THE COURT: Please have a seat on the witness stand,  
23 sir.

24 MR. HAYNES: Your Honor, may I approach and pass out  
25 the binders?

1 THE COURT: Yes, you may.

2 MR. HAYNES: May I proceed, Your Honor?

3 THE COURT: Yes. Have we got -- the witness got the  
4 microphone where we can hear him? Okay. I guess we'll find  
5 out.

6 Yes, proceed.

7 SANDEEP CHATTERJEE, Ph.D.

8 having been duly sworn, testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. HAYNES:

11 Q. Good morning, Doctor Chatterjee.

12 A. Good morning.

13 Q. Could you please introduce yourself to the jury?

14 A. Good morning. My name is Sandeep Chatterjee. I am an  
15 independent technology expert and consultant.

16 Q. Doctor Chatterjee, were you retained by Nokia to assess  
17 Smart Path's allegations of infringement in this case?

18 A. I was.

19 THE COURT: And, Mr. Haynes, why don't you adjust  
20 the microphone a little bit. It's been pointed downward.  
21 Thank you.

22 Q. (BY MR. HAYNES) And did you form an opinion regarding  
23 whether Nokia's accused products infringe the '599 Patent?

24 A. I did.

25 Q. And what did you conclude after forming that opinion?

1 A. So what I concluded after my investigation is that Nokia  
2 does not infringe and, in fact, as I'll explain, Nokia cannot  
3 infringe the asserted claim of the '599 Patent.

4 Q. Before we get into the details of your opinion, I'd like  
5 to explore a little bit of your background. Is that all  
6 right?

7 A. Yes.

8 Q. Does the demonstrative that we've displayed here  
9 accurately summarize a few of your qualifications in  
10 education?

11 A. Yes.

12 Q. Can you please explain to the jury what you've listed at  
13 the top relating to the Massachusetts Institute of Technology?

14 A. So I have a Ph.D. in computer science from MIT as well as  
15 master's in electrical engineering and computer science.

16 Q. Doctor Chatterjee, what is the highest degree that you  
17 hold?

18 A. A Ph.D.

19 Q. And where did you obtain that degree?

20 A. MIT.

21 Q. Did you do a doctoral thesis at MIT?

22 A. I did.

23 Q. And what was the subject matter of your doctoral thesis?

24 A. So my thesis was about adding intelligence and network  
25 communications to standard home and office devices. For



1 example -- and this was back in 2000, 1999 time frame, and the  
2 concept was how do you add intelligence in communication so  
3 that, for example, your refrigerator can communicate with your  
4 television, your children's toys can communicate with your  
5 television, and they can coordinate and offer value.

6 So, for example, if your children are playing with their  
7 toys while you're watching TV, it will automatically increase  
8 the volume so you're able to keep on enjoying the television  
9 program.

10 Q. Did your doctoral thesis work win any awards?

11 A. It did.

12 Q. And what awards did it win?

13 A. So I'm very honored that my Ph.D. dissertation was  
14 selected as one of the top inventions in computing at MIT, and  
15 it's preserved in a time capsule at the Museum of Science in  
16 Boston.

17 Q. Are you aware of anyone else that has received that same  
18 honor?

19 A. Yes. I share that honor with some other people,  
20 including Bill Gates, who founded Microsoft, as well as Tim  
21 Berners-Lee, who invented the worldwide web.

22 Q. Doctor Chatterjee, do you have any other degrees?

23 A. I do.

24 Q. And what are those?

25 A. Like I mentioned, I have a Master's from MIT as well as a

1 Bachelor's from UC-Berkeley.

2 Q. Did you do a master's thesis at MIT?

3 A. I did.

4 Q. And what was the subject of your master's thesis?

5 A. So my master's was on communications within mesh networks  
6 for massively parallel computing.

7 MR. HAYNES: Can we go to the next demonstrative, 3?

8 Q. (BY MR. HAYNES) What have you illustrated here, Doctor  
9 Chatterjee?

10 A. Here I'm showing the computer on which my master's thesis  
11 was performed. On the left-hand side, I'm showing the M  
12 machine which is the -- the massively parallel computer I was  
13 talking about. And each of those black circles represents a  
14 node which are connected in a 3D mesh network to each other.  
15 And my master's thesis was on how do you optimize the  
16 communications between each of those nodes.

17 Q. Doctor Chatterjee, where are you currently employed?

18 A. Experantis.

19 Q. And what do you do there?

20 A. Well, Experantis is my own consulting -- technology  
21 consulting company.

22 MR. HAYNES: If we could go to the next  
23 demonstrative, please.

24 Q. (BY MR. HAYNES) What have you illustrated on this slide,  
25 Doctor Chatterjee?

1 A. So here I am showing a number of images, screenshots,  
2 from a television news program on the Bloomberg TV channel,  
3 and the Bloomberg news program is called Innovators. And I,  
4 together with the company that I co-founded, was featured on  
5 this program.

6 The reason we were featured is that I had invented one of  
7 the first, if not the first, mobile banking technology in the  
8 world. And so the concept there was that even though there  
9 may not be a bank branch anywhere nearby your house, maybe the  
10 closest bank branch is 500 miles away, but how do you actually  
11 enable people to perform banking transactions with that bank.

12 So a lot of the people -- if you see in the background on  
13 the top right photo, these are in rural villages, and these  
14 are all of the women who -- they're living 500, 600 miles away  
15 from the big cities where the banks are, and they earn \$1, \$2  
16 a day. How do you enable them to deposit that 1 or \$2 a day  
17 that they're earning into the bank so they are able to earn  
18 interest from that and they are able to take loans and other  
19 transactions from the bank.

20 Q. In the middle of that slide, there is a device, a  
21 person's holding it. What is that?

22 A. So that is the device -- the hardware, together with the  
23 software that we wrote, that enabled these secure transactions  
24 to happen with the banks. That device would communicate over  
25 a wireless network all the way to a bank's computer system and

1 enable secure transactions to happen from anywhere in the  
2 world back to that bank.

3 Q. Okay.

4 MR. HAYNES: Could we go to the next slide, please?

5 Q. (BY MR. HAYNES) Doctor Chatterjee, what have you  
6 illustrated here?

7 A. These are a couple of my awards and industry recognition.

8 Q. At the very top there's an entry for the World Economic  
9 Forum. What is that referencing?

10 A. So I'm very -- I'm very happy and honored to be  
11 recognized or to have been recognized by the World Economic  
12 Forum as what they call a Young Global Leader. And they  
13 provide this honor or they provided this honor based on my  
14 professional accomplishments, commitment to society, and  
15 potential to contribute to shaping the future of the world.

16 And one of the reasons they gave me this recognition is  
17 because I have been and I continue to develop innovative  
18 technologies to really positively impact the lives of people.  
19 Like I talked about with the mobile banking system, the  
20 purpose there was to enable people to have a bank account, to  
21 perform these banking transactions, and then financially  
22 empower themselves, financially empower their families.

23 Many of them came out of poverty. Because they were able  
24 to build a relationship with a bank, they were able to take  
25 loans, and because of that, they were able to come out of

1 poverty, build a better life for themselves, as well as for  
2 their families.

3 Q. Doctor Chatterjee, do you yourself have any patents?

4 A. I do.

5 Q. How many patents do you have?

6 A. I believe the latest count is 10 U.S. patents and seven  
7 international patents.

8 Q. And what's the general subject matter of the patents that  
9 you have?

10 A. So my patents came out of the research I did in  
11 developing that mobile banking system we talked about, and  
12 they are directed to optimized communications over low  
13 bandwidth wireless networks.

14 Q. The next entry on your slide references IAM 1000. Why  
15 have you listed that?

16 A. So the IAM organization, every year they publish a list  
17 or a ranking of patent professionals, and I'm very privileged  
18 to have been listed in the IAM Patent 1000 as one of the top  
19 expert witnesses.

20 Q. The next entry on this slide references a book entitled  
21 *Developing Enterprise Web Services, An Architect's Guide*.

22 What is that referring to?

23 A. So I co-authored a book with that title, and web services  
24 is an industry standard technology for how two computers, or  
25 more than two computers, how they communicate with each other

1 over different types of communications networks.

2 Q. And then the very final entry on this slide is a  
3 reference to the JSR 172 Expert Group. Can you explain to the  
4 jury what that is?

5 A. The JSR 172 Expert Group is an industry standards expert  
6 group. And what we did, we got together and we defined the  
7 worldwide standard for mobile web services, so how mobile  
8 devices communicate, how mobile computers communicate over  
9 communications networks.

10 Q. Doctor Chatterjee, about when did you start working on  
11 computer networking and computer networks?

12 A. Probably around 1995 time frame.

13 Q. So for about how many years have you been working in that  
14 industry?

15 A. Almost 30 years.

16 Q. Okay. In the context of your work in that industry, are  
17 you familiar with industry standards that relate to computer  
18 networking?

19 A. I am.

20 Q. Okay. We've heard a fair bit of testimony in the trial  
21 about something called the OSI model. Are you familiar with  
22 that?

23 A. I am.

24 Q. And is that something that you have worked with in the  
25 context of the projects that you've already described?

1 A. Yes.

2 MR. HAYNES: At this point, Your Honor, I would move  
3 that Doctor Chatterjee be admitted as an expert in the field  
4 of computer networking and routing and the subject matter of  
5 the asserted patents.

6 THE COURT: Is there objection?

7 MR. BENNETT: No objection, Your Honor.

8 THE COURT: Without objection, the Court will  
9 recognize this witness as an expert in those designated fields  
10 and areas.

11 Please continue.

12 MR. HAYNES: If we could bring up the next  
13 demonstrative, 8.6.

14 Q. (BY MR. HAYNES) What have you illustrated here, Doctor  
15 Chatterjee?

16 A. This is the cover page of the '599 Patent.

17 Q. I take it you're familiar with that patent?

18 A. Yes.

19 Q. Have you read that patent?

20 A. Many, many times.

21 Q. Did you conduct any investigation regarding the  
22 technology that is described in that patent?

23 A. I did.

24 Q. And can you describe to the jury the investigation that  
25 you conducted?

1 A. So in addition to reading the actual patent many, many  
2 times, like I mentioned, I also reviewed the prosecution file  
3 history for the '599 Patent. I reviewed technical documents  
4 that demonstrate the state of the art, like what technologies  
5 were existing and used at the time that the '599 Patent was  
6 filed.

7 I've also reviewed technical documents produced by Nokia  
8 in this case. I've also reviewed source code that has been  
9 produced by Nokia with regards to the Nokia routers that are  
10 accused.

11 Q. Okay. Did you review the documents that were considered  
12 by Doctor Valerdi and Doctor Cole in this case?

13 A. I did.

14 Q. Okay. About how many hours would you say you spent  
15 considering the materials that you just described?

16 A. Several hundred hours.

17 Q. Now, we've heard a lot of testimony in this case about  
18 source code in Nokia's products. Is that something you  
19 reviewed?

20 A. I did.

21 Q. And for the features that are supported by a particular  
22 Nokia router, were you able to determine any material  
23 differences between the source code that you reviewed and how  
24 the accused functionality is described in Nokia's technical  
25 documents?



1 A. No.

2 MR. HAYNES: If we could bring up the next  
3 demonstrative, 8.7.

4 Q. (BY MR. HAYNES) What have you illustrated here?

5 A. Here I'm showing the definition of level of ordinary  
6 skill in the art that was provided by Nokia.

7 Q. So the level of ordinary skill that is listed here is a  
8 Bachelor's degree in electrical engineering, computer  
9 engineering, computer science, or a related technical field,  
10 and three to four years of experience in the design and  
11 development of telecommunication networks, systems, equipment,  
12 and components. Someone with less technical education but  
13 more professional experience, or more technical education but  
14 less experience, could also have met this standard.

15 Is that the standard for a person of ordinary skill in  
16 the art that you applied in this case?

17 A. Yes.

18 Q. At the time of the filing of the '599 Patent, were you,  
19 yourself, a person of ordinary skill in the art?

20 A. Yes, I met this definition.

21 Q. You were in the courtroom when Doctor Valerdi testified?

22 A. I was.

23 Q. And did you hear his definition of what a person of  
24 ordinary skill in the art was?

25 A. I did.

1 Q. Would any of the opinions that you provided in this case  
2 change at all if you were to have applied the exact definition  
3 that he used versus your definition?

4 A. Doctor Valerdi's definition was slightly different than  
5 mine, but none of my opinions would change whether this  
6 definition or the definition that Doctor Valerdi applied.

7 Q. Okay. Doctor Chatterjee, did you get an opportunity to  
8 review the claim constructions provided by the Court in this  
9 case?

10 A. I did.

11 Q. And in performing your analysis in this case, did you  
12 apply that analysis using the definitions of the claim terms  
13 for the '599 Patent that were provided by the Court?

14 A. I did.

15 MR. HAYNES: If we can go to slide 8.8, back to the  
16 '599 Patent.

17 Q. (BY MR. HAYNES) What's the title of this patent, Doctor  
18 Chatterjee?

19 A. Layer 3 Network Routing with RPR Layer 2 Visibility.

20 Q. Okay. At a very high level, what's the '599 Patent  
21 about?

22 A. So the '599 Patent is about that there are two networks,  
23 one layer 2 ring network and one external layer 3 network, and  
24 the '599 Patent is about being able to gain visibility into  
25 each other.

1 Q. Okay.

2 MR. HAYNES: If we could go to slide 8.9.

3 Q. (BY MR. HAYNES) What have you illustrated here, Doctor  
4 Chatterjee?

5 A. That based on my analysis, my investigation, and as I  
6 will show you today, I've determined that the '599 Patent, the  
7 asserted claim of the '599 Patent, is not infringed and, as I  
8 explained, cannot be infringed by the accused Nokia products.

9 Q. Okay.

10 MR. HAYNES: If we could go to the next slide, 10.

11 Q. (BY MR. HAYNES) What have you illustrated here, Doctor  
12 Chatterjee?

13 A. Here I'm showing that, with regards to my  
14 non-infringement opinion, there are at least two independent  
15 reasons why Nokia does not and cannot infringe.

16 Q. And what are those reasons?

17 A. The first one is that there is no layer 2 ring network,  
18 and the second one is that there is no defining paths to  
19 external layer 3 network elements.

20 Q. Okay. You've mentioned layer 2 ring networks and  
21 external layer 3 networks. What are the layer 2 and layer 3  
22 referring to there?

23 A. So those are in reference to the OSI model that we  
24 touched on earlier.

25 Q. Okay. I know we've heard a little bit about that, but I

1 just want to refresh our memory.

2 MR. HAYNES: If we could go to the next  
3 demonstrative, slide 11.

4 Q. (BY MR. HAYNES) What have you shown here, Doctor  
5 Chatterjee?

6 A. Here I'm showing the bottommost three layers of the OSI  
7 model.

8 Q. Okay. On the left, you've illustrated layer 1 physical  
9 layer. What is layer 1 in the OSMO?

10 A. So layer 1 is called the physical layer. And one way to  
11 think about it is that layer 1 is essentially the physical  
12 wire. So the cable that is used to connect different  
13 computers within your home, that's layer 1.

14 Q. Okay. And the middle of your demonstrative, you  
15 identified layer 2, the data link layer. Can you explain to  
16 the jury what that is?

17 A. So layer 2 is the layer that allows communications within  
18 a local area network. For example, within your home, you may  
19 have multiple computers, you -- they may -- you may have a  
20 printer. But even though your computers may not directly  
21 connect to your printer using a wire, layer 2 is what allows  
22 you to print documents from your computer to that printer even  
23 though there's not a direct wire between your computer and  
24 that printer.

25 Q. Okay. And then on the right, you've illustrated layer 3,

1 the network layer. What is that?

2 A. The network layer essentially allows interconnection  
3 between different local area networks. So here in the diagram  
4 I'm showing the home local area network on the bottom, there  
5 may be an office local area network, there may even be a  
6 coffee shop that provides a local area network.

7 Layer 3 is the layer in the OSI model that allows them  
8 all to interconnect and communicate with each other.

9 Q. Doctor Chatterjee, were you in the courtroom during  
10 Doctor Jeffay's testimony?

11 A. For part of it, yes.

12 Q. Did you -- were you here for the part where Doctor Jeffay  
13 talked about topologies?

14 A. Yes.

15 Q. What's your understanding of what network topologies  
16 refers to?

17 A. So network topology is essentially a layout, and it's  
18 about the arrangement of nodes, computers, routers within a  
19 network.

20 Q. What kind of topology is at issue in the '599 Patent?

21 A. The '599 Patent specifically requires a layer 2 ring  
22 network.

23 Q. Okay. And what is a layer 2 ring network?

24 A. So a layer 2 ring network is a network which is a closed  
25 loop, and each node within that layer 2 ring network has one

1 layer 2 connection going into it and one layer 2 connection  
2 coming out of it.

3 Q. Okay.

4 MR. HAYNES: If we could go to the next  
5 demonstrative, slide 12 --

6 Q. (BY MR. HAYNES) -- which is a call-out of figure 1 from  
7 the '599 Patent. Do you see that, sir?

8 A. I do.

9 Q. What is illustrated in figure 1 of the '599 Patent?

10 A. So figure 1 is providing an example of the teachings of  
11 the '599 Patent.

12 Q. Okay.

13 MR. HAYNES: Can we go to the next demonstrative?

14 Q. (BY MR. HAYNES) On slide 13, there's some blue  
15 highlighting. What does that represent?

16 A. So what I've done here is I've taken figure 1 and added  
17 the blue highlighting to show the layer 2 ring network.

18 MR. HAYNES: Go to the next demonstrative.

19 Q. (BY MR. HAYNES) Now you've added some red to that. What  
20 is that illustrating?

21 A. So I've used the red highlighting to identify the  
22 external layer 3 network, which is also taught in the '599  
23 Patent.

24 Q. What do you mean when you say it's an external layer 3  
25 network?

1 A. It's external to the layer 2 ring network. So you have  
2 the layer 2 ring network. The layer 3 network is separate,  
3 external to that layer 2 network.

4 Q. Okay.

5 MR. HAYNES: If we can go to the next demonstrative.

6 Q. (BY MR. HAYNES) Now you've highlighted in red some of  
7 the lines between what you identified as the layer 2 ring  
8 network and the external layer 3 network.

9 What are the red lines that you've highlighted here now?

10 A. So those are connections between the layer 2 ring network  
11 and that external layer 3 network that we talked about.

12 Q. Okay. Now, prior to the '599 Patent, would the devices  
13 in the layer 2 ring network have had visibility into the  
14 structure of the external layer 3 network?

15 A. So as explained in the '599 Patent, no, it would not.

16 MR. HAYNES: If we could go to the next  
17 demonstrative.

18 Q. (BY MR. HAYNES) Doctor Chatterjee, what have you  
19 illustrated here?

20 A. So I've taken the same figure 1 that we were just looking  
21 at on the last slide, and I've removed some of the labels to  
22 make the picture more clear and for us to have a cleaner  
23 illustration diagram for us to discuss what's happening.

24 Q. Okay. You've added some labels on the connections coming  
25 out of node E, node D, and node C. What do those labels

1 represent?

2 A. The labels state egress, and egress is another word for  
3 exit. And as you can see, those nodes, nodes E, D, and C, are  
4 the exit points through which you're able to exit that layer 2  
5 ring network.

6 MR. HAYNES: Okay. If we could go to the next  
7 demonstrative.

8 Q. (BY MR. HAYNES) I notice we've added some more boxes in  
9 the cloud on the left. What is that illustrating?

10 A. So like we talked about, the '599 Patent talks about this  
11 external layer 3 network. As we know, in a network you have  
12 more than simply one box. You have multiple routers, multiple  
13 computers. So, again, just to make a picture that's easy to  
14 understand then for me to explain what we're talking about, I  
15 put in these four boxes within that layer 3 network.

16 MR. HAYNES: Okay. If we could go to the next  
17 slide.

18 Q. (BY MR. HAYNES) Doctor Chatterjee, what have you  
19 illustrated here?

20 A. Here I am trying to graphically illustrate the problems  
21 that the '599 identifies that it's trying to solve.

22 Q. Okay. In the lower left, there's some text that is  
23 excerpted from column 8, line 42 to 47, of the '599 Patent.  
24 What is that describing?

25 A. So that is from the specification of the '599 Patent.



1 And what it's stating there is that the first of the two  
2 problems that the '599 Patent is trying to solve is that  
3 because -- and you see that brick wall in the middle between  
4 the layer 2 ring network on the right and the external layer 3  
5 network.

6 What the '599 Patent is saying is because the two  
7 networks cannot see into each other, and that's why I've  
8 depicted that brick wall, because they cannot see into each  
9 other, that's why they're not able to take good decisions on  
10 which node, which one of -- for example, which one of the  
11 three egress nodes to use.

12 And so what it's saying at the bottom there of the text  
13 from the specification is that the first problem that the '599  
14 Patent identifies that it's trying to solve is because you --  
15 because the nodes within the layer 2 ring network on the  
16 right-hand side don't have any visibility into the external  
17 layer 3 network, they always use the same egress node. And  
18 I've shown that here with node D.

19 So every time there is exit from that layer 2 ring  
20 network, it's going through that same egress node even though  
21 there are three potential egress nodes.

22 Q. Why is it a problem that it always goes through the same  
23 egress node?

24 A. Well, the problem is that you're not able to pick which  
25 is the best exit for me to take to get to where I'm going.

1 MR. HAYNES: Okay. If we can go to your next  
2 demonstrative.

3 Q. (BY MR. HAYNES) I notice now we've changed the text on  
4 the bottom, and it's a different passage from column 8, lines  
5 48 through 49, of the '599 Patent. Is that right?

6 A. Yes.

7 Q. And what are you illustrating in this slide?

8 A. Here I'm talking about the second of the two problems  
9 that the '599 Patent is attempting to solve. And what it's  
10 explaining here is, again, because there is a brick wall,  
11 because there is no visibility from the layer 2 ring network  
12 on the right-hand side into the external layer 3 network,  
13 you're not able to -- the nodes within the layer 2 ring  
14 network are not able to define paths from the nodes within the  
15 layer 2 ring network to the external layer 3 network nodes,  
16 which minimize, for example, the number of hops.

17 Q. Okay. There's a reference in the text to a minimum hop  
18 ring entry awareness. What is that referring to?

19 A. So a hop in networking is that if you're trying to send  
20 data, it doesn't go directly; it will go through different  
21 routers. And so each one of those is called a hop. So  
22 clearly if you're trying to optimize when you're sending data,  
23 you want to minimize the number of hops to get to wherever  
24 you're going.

25 Q. Okay. So prior to the invention of the '599 Patent,

1 would the nodes inside the layer 2 network know the best way  
2 to get out of the ring network to elements within the external  
3 network?

4 A. It would not because, again, of that brick wall in the  
5 middle that prevents visibility between the layer 2 ring  
6 network on the right and the external layer 3 network.

7 Q. Okay.

8 MR. HAYNES: If we could go to the next slide.

9 Q. (BY MR. HAYNES) Now, I notice we've now -- the title is  
10 now Proposed Solution. Do you see that?

11 A. I do.

12 Q. Can you explain to the jury what the proposed solution of  
13 the '599 Patent was?

14 A. So the proposed solution of the '599 Patent is to take  
15 the host table, which is shown on the left-hand side, the host  
16 table from the external layer 3 network, and simply share it  
17 with the nodes of the layer 2 ring network on the right-hand  
18 side, and, thus, giving visibility to the layer 2 ring network  
19 on the right-hand side into the layer 3 -- external layer 3  
20 network on the left.

21 Q. Okay. Did you prepare an animation to try to illustrate  
22 sort of what that looks like?

23 A. Yes. I've tried to illustrate what that looks like.

24 MR. HAYNES: Mr. Carrillo, can we try to play that?

25 Q. (BY MR. HAYNES) Okay. So what the animation showed was

1 that the host table moved across into the layer 2 network and  
2 then our wall disappeared. Why did you -- what are you  
3 illustrating there?

4 A. So, as I explained, by sharing the host table from the  
5 layer 3 network with the nodes of the layer 2 network -- layer  
6 2 ring network on the right-hand side, now the layer 2 ring  
7 network has visibility into that external layer 3 network, and  
8 that's why I removed that brick wall that was in the middle.

9 Q. Okay. What kind of information is contained in the host  
10 table?

11 A. The host table typically contains information about the  
12 nodes and their connections within the network.

13 MR. HAYNES: Okay. Let's go to the next slide.

14 Q. (BY MR. HAYNES) Okay. Now we've -- I see  
15 we've -- there's a path that's going from node A, also 18,  
16 going around through node B, through node C to node D, and  
17 then out to the external layer 3 network.

18 What is -- what are you illustrating there?

19 A. So what I'm trying to animate and -- and illustrate here  
20 is that now that the nodes within the layer 2 ring network on  
21 the right-hand side, now that they have visibility into that  
22 external layer 3 network, it can define different paths from  
23 that node. For example, in this illustration, I'm showing a  
24 path from node A within the layer 2 ring network, through node  
25 B, through node C, to the egress node D, out to the -- oh, I'm

1       sorry. I touched the screen.

2       Q. I'll clear it for you.

3       A. Okay. And then to the external layer 3 network elements  
4       on the left-hand side.

5       Q. Okay.

6               MR. HAYNES: If we can go to the next slide.

7       Q. (BY MR. HAYNES) Okay. Now, there is another path going  
8       from node A, through node E labeled 16, out to the external  
9       elements. What are you illustrating here?

10      A. So, again, I'm simply showing a different path, another  
11      path from that same node, node A, inside the layer 2 ring  
12      network to that same node in the external layer 3 network.

13      Q. In the proposed solution of the '599 Patent, now that you  
14      have two paths that you can choose from, how would you go  
15      about getting from node A out to the external element?

16      A. Well, one example would be if you look at the two paths,  
17      the red path, it requires five hops. You would have to go  
18      through B, C, D, and then within the two nodes in the external  
19      layer 3 network, whereas the blue path would be two hops.

20             So one proposed solution that the '599 says is that now  
21      that you have these two paths, the red path and the blue path,  
22      to go from node A to that external layer 3 network node, you  
23      can pick, for example, the blue one because it's shorter.

24      Q. Okay.

25             MR. HAYNES: If we could go to the next slide.

1 Q. (BY MR. HAYNES) Okay. Slide 22 is an illustration of  
2 claim 59. You understand that that is the claim that Smart  
3 Path has asserted in this case?

4 A. Yes.

5 Q. And do you understand that what Smart Path has accused of  
6 infringing claim 59 in this case is a configuration of Nokia  
7 routers and something called the triple play services delivery  
8 architecture?

9 A. Yes.

10 Q. Okay. And did you in your investigation compare the  
11 elements of this claim to Nokia's triple play architecture to  
12 assess whether or not that architecture met the elements of  
13 the claims?

14 A. Yes, as construed by this Court.

15 Q. Okay.

16 MR. HAYNES: If we can go to the next slide.

17 Q. (BY MR. HAYNES) What did you conclude regarding whether  
18 or not Nokia's triple play architecture could infringe the  
19 '599 Patent?

20 A. So as I explained, based on my investigation and  
21 analysis, I concluded, and I'll explain some of the reasons to  
22 all of you this morning, that the accused Nokia products  
23 cannot -- do not and cannot infringe.

24 Q. Okay. And I see, you know, you've got two red circles  
25 with lines through them on certain parts of the claim. What

1 are those indicating?

2 A. So what I'm trying to show here is that I've talked about  
3 these two independent reasons on the left-hand side. And as  
4 we know, in order to infringe, you have to infringe the actual  
5 claim.

6 So what I've done on the right-hand side is that I've put  
7 up claim 59, and I'm showing you that as the first bullet I'm  
8 stating as no layer 2 ring network, there is within the claim  
9 a layer 2 ring network. It's hard to see because it's behind  
10 that red X.

11 And similarly for that second bullet, that second  
12 independent reason why Nokia does not and cannot infringe, I'm  
13 showing the corresponding claim limitations which are not met.

14 Q. The lower most red circle is going through claim language  
15 on the right. How does that relate to your infringement  
16 opinions?

17 A. That because that cannot be met, that there cannot be  
18 infringement.

19 Q. Okay. And Nokia's triple play architecture, can nodes  
20 within the triple play architecture create paths through an  
21 egress node out to elements of an external network?

22 A. No. It's impossible.

23 MR. HAYNES: All right. Let's pull up your next  
24 slide, 8.24.

25 Q. (BY MR. HAYNES) This is an excerpt from JX 46a at page

1 41. Can you explain what we're looking at here, Doctor  
2 Chatterjee?

3 A. This is a figure from this document. On the left-hand  
4 side is the cover page of that document. The document is  
5 called the triple play service delivery architecture guide,  
6 and this is one of the figures, figure 2, from that document.

7 Q. Okay. For which Nokia products is this guide?

8 A. Well, it's talking about the 7450 and the 7750.

9 Q. Okay. Can you explain to the jury at a high level what  
10 Nokia's triple play architecture is used for?

11 A. So triple play is the -- the triple play architecture is  
12 to allow the delivery of three things--high speed internet,  
13 video, and voice over networks to residential subscribers. So  
14 essentially providing internet, video, and voice to homes.

15 Q. Okay.

16 MR. HAYNES: If we could go to the next slide.

17 Q. (BY MR. HAYNES) This is an excerpt from page 37 of JX  
18 46a. What have you highlighted at the bottom here, Doctor  
19 Chatterjee?

20 A. I've simply highlighted that, consistent with what I  
21 explained what triple play is, that it's stating that this  
22 bundling of video, voice, and data services to residential  
23 subscribers is now commonly known as triple play services.

24 Q. Okay.

25 MR. HAYNES: If we could go to your next



1 demonstrative.

2 Q. (BY MR. HAYNES) We're back at figure 2 on page 41 of JX  
3 46a, except now there's some blue highlighting. Can you  
4 explain what the blue highlighting is there for?

5 A. The document talks about that within Nokia's triple play  
6 architecture, there are two components. One is called a BSA,  
7 and I've highlighted in this blue color the BSAs in this  
8 figure 2.

9 Q. Doctor Chatterjee, what is a BSA?

10 A. A BSA is a broadband service aggregator.

11 Q. And what does the BSA, the broadband service aggregator,  
12 do in the triple play architecture?

13 A. So consistent with the name, broadband service  
14 aggregator, it aggregates traffic from different homes.  
15 Remember, we talked about the triple play is about delivering  
16 video, voice, and high speed internet to homes. So the BSA  
17 aggregates traffic from different homes, puts it all together,  
18 and then sends it off to what's called the BSR in the Nokia  
19 architecture.

20 MR. HAYNES: Okay. If we can go to the next slide.

21 Q. (BY MR. HAYNES) Is what you've highlighted in yellow the  
22 BSR?

23 A. Yes.

24 Q. Okay. What does -- what is a BSR?

25 A. BSR is a broadband service router.

1 Q. And what does the broadband service router, BSR, do in  
2 the Nokia's triple play architecture?

3 A. The job of the BSR is to essentially take the traffic  
4 that is coming from the BSAs, figure out where it should go,  
5 and then the BSR sends it off to the internet.

6 Q. What types of network device are the BSAs and BSR?

7 A. They're routers.

8 Q. Okay. Doctor Chatterjee, you've been in the courtroom  
9 when Doctor Valerdi was testifying. Right?

10 A. I was.

11 Q. And you understand that there's been a lot of talk about  
12 this red circle in this picture. Do you recall that?

13 A. Yes.

14 Q. Can you explain to the jury what that red circle  
15 represents?

16 A. The red circle is showing the secure VPLS infrastructure,  
17 and you can see the red font in the middle which states,  
18 secure VPLS infrastructure. And if you read the actual text  
19 within this document, this triple play service delivery  
20 architecture guide, it explains that that secure VPLS  
21 infrastructure that is shown in this figure is a secure area  
22 where things like denial of service attacks and those kind of  
23 malicious acts cannot happen. So it's a secure area, a secure  
24 infrastructure.

25 Q. Okay. Does that red circle represent any sort of

1 connection between the BSAs and the BSR?

2 A. No.

3 Q. And how do you know that?

4 A. Because it's -- the actual connections are shown in the  
5 figure and further explained in the actual text accompanying  
6 this figure.

7 Q. Okay. What are the actual connections between the BSAs  
8 and the BSR?

9 A. The dotted lines that are -- that are shown in this  
10 figure.

11 Q. Okay.

12 MR. HAYNES: If we could go to the next slide.

13 Q. (BY MR. HAYNES) Are the dotted lines you're referring to  
14 what you've highlighted in blue here?

15 A. Yes.

16 Q. Now, what type of topology is shown here between the BSAs  
17 and the BSR?

18 A. The network topology is a mesh.

19 Q. Okay. And at what layer is that mesh operating at?

20 A. At layer 2.

21 Q. Now, in Nokia's triple play architecture, are those BSAs  
22 connected to each other at layer 2?

23 A. No.

24 Q. What type of layer 2 connection exists between the BSAs  
25 and the BSR?

1 A. The layer 2 connection at layer 2 is, like I explained, a  
2 mesh.

3 Q. Okay. Have you heard that -- what type of layer 2  
4 protocol is that connection?

5 A. Oh, okay. It's a VPLS.

6 Q. Okay. Can you just at a very high level explain what  
7 VPLS is?

8 A. So VPLS is virtual private LAN service. And like I  
9 mentioned, it's creating this secure bubble in some ways, if  
10 you think about it, where bad things cannot happen. It's a  
11 secure infrastructure.

12 Q. Okay.

13 MR. HAYNES: If we could to the next slide, please.

14 Q. (BY MR. HAYNES) On this slide, Doctor Chatterjee, you  
15 called out some text from the bottom of page 41, rolling over  
16 to 42. Can you explain to the jury what this text is  
17 describing?

18 A. Yes. So as I explained, this document is something like  
19 a thousand pages or over a thousand pages long. It's not only  
20 that figure 2. There is a lot of writing, there's a lot of  
21 text that accompanies that figure, and this is some of that  
22 text that explains that figure.

23 And what I've done on the top there is I've highlighted  
24 this first sentence, "The connectivity between BSAs and BSRs  
25 is a layer 2 forwarding model," and that's consistent with

1 what I explained to you that the BSAs aggregate traffic and  
2 simply forwards it to the BSR at layer 2.

3 Q. Okay. You've also highlighted in yellow a sentence that  
4 states, "One of the advantages of using VPLS for this  
5 application is that VPLS instances can be automatically  
6 established over both hub-and-spoke and ring topologies  
7 providing sub-50 milliseconds resilience." Do you see that?

8 A. I do.

9 Q. Can you explain to the jury what that is describing?

10 A. So like we talked about VPLS is a layer 2 technology, and  
11 this is saying that you're able to automatically establish  
12 VPLS. And one of the key words to -- to notice is it saying  
13 automatically established over both hub-and-spoke and ring  
14 topologies.

15 And so because VPLS is a layer 2 technology, when it's  
16 saying it can be established over hub-and-spoke and ring, that  
17 means that the hub-and-spoke and ring topologies must be the  
18 layer below it, which is layer 1.

19 Q. Now, those references to hub-and-spoke and ring  
20 topologies, what's that referring to?

21 A. Again, like I explained, that it's simply stating that  
22 the physical connections--remember we talked about with  
23 regards to the OSI model, that the layer 1 is the physical  
24 connections, the actual wire that -- that you have in your  
25 home? This is simply stating that that physical layer, that

1 layer 1, can be hub-and-spoke or ring, but the layer 2 above  
2 that, which is the VPLS, it explains in the next sentence that  
3 it's always a full mesh.

4 Q. Okay. You referenced the next sentence which you've  
5 highlighted in blue here. That sentence states, "Regardless  
6 of the fiber plant layout, VPLS enables a full mesh to be  
7 created between BSA and BSR nodes, ensuring efficient traffic  
8 distribution and resilience to node or fiber failure."

9 Do you see that?

10 A. I do.

11 Q. Can you explain what you're referring to with regard to  
12 that sentence?

13 A. Yes. So, again, the yellow highlighted sentence, as I  
14 explained, it's talking about that hub-and-spoke and ring can  
15 be done at layer 1, which is the physical layer. That first  
16 part of that -- that blue sentence, regardless of the fiber  
17 plant layout, we all know fiber which is the -- the cable on  
18 which optical communications happen, that's the physical wire.

19 So it's saying regardless of what's happening at the  
20 physical layer, which is layer 1, regardless of what's  
21 happening there, VPLS enables a full mesh to be created. So  
22 again, it's confirming and corroborating what I've explained  
23 to you, that regardless of whether layer 1 is a ring topology  
24 or a hub-and-spoke, at layer 2 it's stating that VPLS enables  
25 a full mesh.

1           So there is always a full mesh at layer 2 regardless of  
2       what's happening at layer 1.

3       Q.    So, Doctor Chatterjee, if the physical fiber were in a  
4       ring, would that make the network a layer 2 ring network?

5       A.    No.

6       Q.    You were in the courtroom when Mr. Valley testified about  
7       this document and actually some of these same sentences you  
8       just described?

9       A.    Yes.

10      Q.    And did Mr. Valley agree or disagree with the explanation  
11      that -- well, let me rephrase that. Did -- do you agree or  
12      disagree with Mr. Valley's explanation of what the connections  
13      are in the triple play architecture?

14      A.    Yes. We're both on the same page, and I believe it's  
15      very clear from reading the text what's going on.

16      Q.    Okay.

17           MR. HAYNES: Let's go to your next demonstrative.

18      Q.    (BY MR. HAYNES) What have you illustrated here, Doctor  
19      Chatterjee?

20      A.    So here what I've done is I've taken that same figure 2  
21      that we were looking at, and I've simply simplified it to  
22      remove some of the labels so that we have a simple, clear  
23      document or a simple, clear diagram that we can look at while  
24      I explain what's happening.

25      Q.    Okay. And you've labeled, above the collection of BSAs

1 and BSRs, layer 2 mesh network. What's that referring to?

2 A. So as we saw in the text that I showed you on the last  
3 slide, the documentation explains that at layer 2, the Nokia  
4 triple play architecture is always a full mesh. So I'm simply  
5 stating again that at layer 2, it's a mesh network, and I'm  
6 showing the connections between the BSA and the BSRs that also  
7 demonstrate they are a mesh.

8 MR. HAYNES: If we could go to the next slide.

9 Q. (BY MR. HAYNES) Doctor Chatterjee, were you in the  
10 courtroom when I asked Doctor Valerdi about these definitions  
11 of a ring network and a mesh network?

12 A. Yes.

13 Q. Do you agree with Doctor Valerdi that a ring network is a  
14 local area network in which device nodes are connected in a  
15 closed loop or ring?

16 A. Yes. Like I explained, in a ring network it's a closed  
17 loop, and then there is a single layer 2 connection -- or for  
18 a layer 2 ring network, a single connection going in and a  
19 single connection going out.

20 Q. In Nokia's triple play architecture, is there a layer 2  
21 ring network under Doctor Valerdi's definition?

22 A. No.

23 MR. HAYNES: If we can go to the next demonstrative.

24 Q. (BY MR. HAYNES) What have you illustrated here, Doctor  
25 Chatterjee?



1 A. So, again, I've come back to the claim, the asserted  
2 claim 59, and I'm showing that the asserted claim 59 requires  
3 that there be a layer 2 ring network. And as I've explained  
4 to you, it is simply not possible and the documentation  
5 confirms this with very clear language that it's always a  
6 layer 2 mesh in the Nokia accused products.

7 Q. Okay.

8 MR. HAYNES: If we can go to your next  
9 demonstrative.

10 Q. (BY MR. HAYNES) Okay. We've talked about the first  
11 independent reason why you believe Nokia does not infringe.  
12 Now I'd like to shift and talk about the second reason that  
13 supports your opinion of non-infringement.

14 And can you just remind us what that reason is at a high  
15 level?

16 A. The second independent reason why Nokia does not infringe  
17 is that Nokia does not define paths to external layer 3  
18 network elements.

19 MR. HAYNES: Okay. If we can go to the next  
20 demonstrative.

21 Q. (BY MR. HAYNES) Doctor Chatterjee, do you understand  
22 that the Court has provided certain definitions of some of the  
23 terms in claim 59 as it relates to the limitation of defining  
24 paths from said nodes through egress nodes of said ring  
25 network?

1 A. Yes.

2 Q. And there's three different colors here so I'm going to  
3 walk through those one by one.

4 In claim 59 on the left, you've highlighted in green the  
5 preamble of that claim, which is the first lines that  
6 introduce the claimed elements. And then on the right, you've  
7 highlighted "Preamble is limiting." What are you illustrating  
8 there?

9 A. So the Court has determined that the preamble is limiting  
10 for this asserted claim 59. And my understanding of what that  
11 means is that the preamble is a limitation that has to be met  
12 for infringement to happen.

13 Q. So just to be clear, Doctor Chatterjee, if there is no  
14 layer 2 ring network, can there be infringement?

15 A. No.

16 Q. Now, you've highlighted in yellow the element that  
17 requires defining paths from said nodes through egress nodes  
18 of said ring network. And then on the right you have some  
19 yellow highlighting as well. What are you illustrating there?

20 A. So in the yellow highlighting on the right-hand side,  
21 I've put in what the Court has construed that claim limitation  
22 to mean. And the Court has construed -- and this is very  
23 important for my analysis that I'll go through with you-all.  
24 The Court has construed that limitation to mean "Defining  
25 paths to external elements of said layer 3 network from said

1 nodes through egress nodes of said ring network."

2 And so like I mentioned, this is going to be important  
3 because it's saying the path has to be to the external  
4 elements of the layer 3 network from the nodes through egress  
5 nodes. So there are three of these elements within this  
6 construction.

7 Q. Okay. Under the Court's construction, how many paths do  
8 you need to define in order to meet the claim limitation?

9 A. More than one.

10 Q. And how many external elements do you need to reach with  
11 those paths?

12 A. More than one.

13 Q. And how many nodes within the layer 2 network must those  
14 paths be defined from?

15 A. More than one.

16 Q. Okay. Moving down to the element you've highlighted in  
17 blue, the claim term is "elements that are external to said  
18 ring network." And then on the, right you've again  
19 highlighted it in blue part of the Court's construction. Can  
20 you explain what you're illustrating there?

21 A. So, again, on the right-hand side with the blue  
22 highlighting, I've set forth what this Court has construed  
23 that limitation to mean, and the Court's construction is  
24 "External elements of a layer 3 data network."

25 Q. Okay.

1 MR. HAYNES: If we could go to the next slide,  
2 please.

3 Q. (BY MR. HAYNES) Doctor Chatterjee, what have you  
4 illustrated here?

5 A. So on the left-hand side I'm showing the original claim  
6 59, and then on the right-hand side I'm showing what the Court  
7 has construed that claim to be saying. So on the right-hand  
8 side, I'm showing the claim 59 as construed by this Court.

9 Q. And when forming your infringement opinions, did you  
10 apply the Court's construction of claim 59 as reflected on the  
11 right-hand side of the slide 35?

12 A. Yes, I did.

13 MR. HAYNES: Okay. Let's look at the next slide,  
14 please.

15 Q. (BY MR. HAYNES) And I want to focus now on the claim  
16 limitations that relate to defining paths to external  
17 elements, selecting one of those paths, and then transmitting  
18 data from said nodes.

19 On the right-hand side of slide 36, you have put your  
20 picture back up there. Why did you put the picture back up?

21 A. Again, just to provide an example so we can see what's  
22 happening. That's why I put the picture up.

23 Q. Okay. So just to be clear, we're going talk about what  
24 you've labeled here in a little bit, but are you suggesting  
25 that this is the only possible way that the claim elements

1 could be met in this figure?

2 A. No. This is simply an example to illustrate what's  
3 happening in the claims.

4 Q. Okay. So I just want to talk about some of the labels  
5 that are on this diagram. Do you see on the right there are  
6 some nodes that are labeled "said nodes"? What do those  
7 labels represent?

8 A. So this is coming back to what I explained a few moments  
9 ago, that the Court's construction has words in there that are  
10 very important to my innovations. And as I read, if you look  
11 at the claim limitation on the left-hand side where it's  
12 saying "defining paths to external elements of said layer 3  
13 network from said nodes through egress nodes," so there on  
14 the -- coming back to that exemplary figure on the right-hand  
15 side, I've labeled what said nodes are. So, for example, said  
16 nodes would be node A and node B.

17 Q. Okay. And that corresponds to node 18 and node 20 from  
18 figure 1 of the '599 Patent?

19 A. Yes.

20 Q. Okay. You've also added some labels for egress nodes.  
21 Remind us again what those represent.

22 A. So egress nodes, like I explained, egress is another word  
23 for exit, and so egress nodes are the exit nodes. And, again,  
24 this is very important to my knowledge. If you again look  
25 back on the left-hand side where that limitation starting

1 "Defining paths," it says, "Defining paths, the external  
2 elements of said layer 3 network from said nodes through  
3 egress nodes." So that path has to go through an egress node.

4 Q. Okay. And then the final thing that you've labeled here  
5 are external elements. What does that label represent?

6 A. So the external elements, again it goes back to  
7 that -- back to the Court's construction that I've shown on  
8 the left-hand side. The paths have to be defined to external  
9 elements of said layer 3 network, and that's what I'm showing  
10 in that diagram. The path is going to the external elements  
11 in that external layer 3 network.

12 Q. Doctor Chatterjee --

13 MR. HAYNES: I'm going to pause just for a second if  
14 it's okay with Your Honor.

15 THE COURT: That's fine. No problem. Let's  
16 continue.

17 Q. (BY MR. HAYNES) Okay. Doctor Chatterjee, I want you to  
18 keep claim 59 and the elements we've been talking about in  
19 your mind, but I want to go back and look at the triple play  
20 architecture again. All right?

21 A. Okay.

22 MR. HAYNES: So if we can go to your next slide,  
23 8.37.

24 Q. (BY MR. HAYNES) And, again, this is from JX 46a at page  
25 41.

1 In the triple play architecture, is it possible to define  
2 paths from the nodes of the triple play network through an  
3 egress node to an external layer 3 network?

4 A. No it's impossible.

5 Q. Why?

6 A. Well, because in the triple play architecture, remember I  
7 explained that the BSAs, they aggregate traffic and they  
8 simply send it to the BSR, and then the -- what I'm  
9 highlighting here in the yellow highlighting, it states very  
10 clearly the BSR terminates the layer 2 access. So it's  
11 terminating whatever is coming over, so that that path is  
12 terminated at the BSR.

13 And remember the claim language we talked about, it's  
14 saying it has to go through an egress node. So this is  
15 confirming that it's simply not possible within the Nokia  
16 triple play architecture to meet that claim language as  
17 construed by the Court because it's terminating.

18 Q. Okay.

19 MR. HAYNES: If we can go to your next  
20 demonstrative. Go one more, Mr. Carrillo.

21 Q. (BY MR. HAYNES) What have you illustrated here, Doctor  
22 Chatterjee?

23 A. So consistent with what I explained and consistent with  
24 what the text of the Nokia triple play document states, the  
25 path, if there is a path from the BSA, it terminates at the

1 BSR, and so I've put that no thru traffic sign just to  
2 graphically illustrate that point. The path ends, the path  
3 terminates. The documentation confirms that it ends and  
4 terminates.

5 Q. Doctor Chatterjee, are you suggesting that there's no way  
6 for data to get from inside the triple play architecture out  
7 to the internet?

8 A. No, that's not what I'm saying.

9 Q. Well, the paths terminate from the BSA and they end at  
10 the BSR, how does data get out?

11 A. The BSR can send data out. What I'm trying to state is  
12 that with regards to my infringement analysis, the Nokia  
13 triple play architecture can never meet the claim 59 as  
14 construed by this Court because the claim requires that it  
15 goes through the BSR.

16 Q. And what is it that must go through the BSR out to the  
17 external elements?

18 A. The path that is defined.

19 Q. Okay. Is there any way in Nokia's triple play  
20 architecture to define paths that start at the BSA node, go  
21 through the BSR node to external elements of the layer 3  
22 network?

23 A. No. It is impossible, and it is confirmed by the Nokia  
24 documentation.

25 Q. Now, Doctor Valerdi, you heard him testify about



1 something called OSPF. Do you recall that?

2 A. Yes.

3 Q. What is OSPF?

4 A. OSPF is a standard technology called open shortest path  
5 first.

6 Q. And you recall Doctor Valerdi suggested that if these  
7 nodes in Nokia's triple play architecture were using this open  
8 shortest path first technology, that could define paths from a  
9 BSA through a BSR to an external element? Do you recall that?

10 A. I do.

11 Q. Is it possible using OSPF to define a path in Nokia's  
12 triple play architecture that goes from the BSA through the  
13 BSR out to the internet?

14 A. No, it's impossible.

15 Q. And why is that?

16 A. Well, like I explained, that any path is terminated at  
17 the BSR. And so there is -- it's simply impossible to have a  
18 path using OSPF or -- using OSPF or anything else that will go  
19 through the BSR to the external elements.

20 Q. And with respect to the OSI model, at what layer does  
21 OSPF operate?

22 A. OSPF operates at layer 3.

23 Q. Does OSPF operate at layer 2?

24 A. No. It operates at layer 3.

25 MR. HAYNES: Okay. Let's go to your next slide, 39.

1 Q. (BY MR. HAYNES) Can you summarize for us where that  
2 leaves us with respect to your opinions on non-infringement?

3 A. So, again, like I explained, the Court's construction of  
4 that defining limitation and the other limitations at the  
5 bottom that are highlighted in yellow are critical to my  
6 analysis. And as I explained that it requires that defining  
7 paths to external elements of said layer 3 network from said  
8 nodes through egress nodes. And as I've explained, it's  
9 simply not possible to meet that claim language as construed  
10 by the Court.

11 Q. Okay.

12 MR. HAYNES: If we can go to the next slide.

13 Q. (BY MR. HAYNES) Doctor Chatterjee, in Nokia's triple  
14 play architecture, have you seen any evidence in this case  
15 that that architecture can be configured in a layer 2 ring  
16 network?

17 A. No.

18 Q. Have you seen any evidence in this case to suggest that  
19 Nokia's triple play architecture is capable of defining paths  
20 to external elements of said layer 3 network from said nodes  
21 through egress nodes of said ring network?

22 A. No.

23 Q. Now, I see you've drawn four red circles, and we've been  
24 talking about two limitations. Why do you have four circles  
25 there?

1 A. So the top circle is talking about that a layer 2 ring  
2 network can never be met.

3 And then for my -- that second independent reason why  
4 Nokia can never infringe claim 59, I'm simply stating that  
5 those three limitations, the ones starting with "defining  
6 paths," the second limitation starting with "selecting one of  
7 said paths," and that third limitation starting with  
8 "transmitting data from", none of those can be met. That's  
9 all I'm saying.

10 Q. Now, we talked a lot at the beginning about the fiber and  
11 how you can, you know, you could in theory connect at the  
12 physical connection level at layer 1 the BSAs into a ring  
13 topology. Do you recall that?

14 A. I do.

15 Q. Even with respect to that theoretical possibility at  
16 layer 1, have you seen any evidence in this case of an actual  
17 Nokia customer that has configured the triple play  
18 architecture at layer 1 in a ring network?

19 MR. BENNETT: Objection; relevance.

20 THE COURT: Do you have a response?

21 MR. HAYNES: Your Honor, Doctor Valerdi has pointed  
22 to the physical connections at layer 1 as support for his  
23 infringement theory. I'm merely saying that even if Doctor  
24 Valerdi's theory that layer 1 was a ring, I'm asking Mr.  
25 Chatterjee has he seen any evidence even at layer 1 whether

1 such a thing exists.

2 THE COURT: It seems to me to clear the low bar of  
3 relevance. I'm going to overrule the objection.

4 Q. (BY MR. HAYNES) Let me restate any question Doctor  
5 Chatterjee.

6 Doctor Chatterjee, do you agree -- well, let me rephrase.

7 Doctor Chatterjee, in your review of the evidence in this  
8 case, including in Doctor Valerdi's testimony, have you seen  
9 any evidence of an actual customer network that is configured  
10 in a layer 1 ring network.

11 A. No, I have not.

12 Q. Now, claim 59 refers to a computer software product. Do  
13 you see that?

14 A. I do.

15 Q. And that requires -- or do you understand that that  
16 requires that there be instructions on that computer that  
17 would cause the computer to perform these method steps that  
18 we've just been talking about?

19 A. Yes. The preamble states, "Instructions when read by a  
20 computer cause the computer to perform a method for."

21 Q. And so in order for a computer to cause or to execute  
22 instructions that could cause these steps to be performed,  
23 what would a Nokia customer have to do?

24 A. Well, they would have to take a number of steps, but one  
25 of the steps would be to configure the routers in a layer 2

1 ring network.

2 Q. And, again, is that possible?

3 A. Not with the Nokia triple play services architecture, no,  
4 it's not.

5 Q. Doctor Chatterjee, we also have heard from Doctor Cole in  
6 this case. Were you here for his testimony?

7 A. I was.

8 Q. Do you recall that Doctor Cole used a single brochure for  
9 the 7250 router product in order to attempt to apportion  
10 amongst various features of the product to try to show value  
11 of the alleged patents? Do you recall that generally?

12 A. I do.

13 Q. Did you review that brochure that Doctor Cole used?

14 A. I did.

15 MR. BENNETT: Objection, Your Honor. May we  
16 approach?

17 THE COURT: State your objection.

18 MR. BENNETT: I believe this is outside the scope of  
19 Doctor Chatterjee's report.

20 THE COURT: All right. Mr. Haynes, you believe it's  
21 within the scope?

22 MR. HAYNES: Absolutely, Your Honor. He directly  
23 addressed with respect to the '599 Patent Doctor Coles' --

24 THE COURT: I'm not asking you how it is. I'm just  
25 asking, do you believe it is.

1 MR. HAYNES: I believe it is, Your Honor.

2 THE COURT: Well, ladies and gentlemen, this is a  
3 matter I will need to take up with counsel outside your  
4 presence. I'm going to ask you to retire to the jury room  
5 briefly. You can simply leave your notebooks in your chairs,  
6 follow all my instructions, including not to discuss the case  
7 among each other. I will work this out with counsel and get  
8 you back in here as soon as possible.

9 The jury should retire to the jury room.

10 (Whereupon, the jury left the courtroom.)

11 THE COURT: All right. Be seated, please.

12 I've got Doctor Chatterjee's report in front of me, or  
13 his reports. It's your objection, Mr. Bennett. Why don't you  
14 tell me why you believe the substance of it is outside the  
15 scope of this expert's report, and then I'll hear a response  
16 from Mr. Haynes.

17 MR. BENNETT: Your Honor, I don't recall Doctor  
18 Chatterjee responding to Doctor Cole's specific apportionment  
19 analysis that the 11 percent and the testimony that he  
20 provided on whether the accused features of the '599 or even  
21 the other patent wasn't addressed today. So I don't recall it  
22 being in the report specifically, that particular -- at least  
23 what was invoked by the scope of the question. I know Doctor  
24 Cole is mentioned in the report, but...

25 THE COURT: All right. Mr. Haynes, what do you have

1 to say?

2 MR. HAYNES: May I have the elmo, please?

3 I'm going to walk through this if you'd like me to, Your  
4 Honor, but there's an entire section of Doctor Chatterjee's  
5 report where he responds to Doctor Cole and his apportionment  
6 analysis.

7 THE COURT: Is this his initial report or his  
8 rebuttal --

9 MR. HAYNES: It's the rebuttal report, Your Honor.

10 THE COURT: Let me get to it. I have it in front of  
11 me. 308, is that the right paragraph?

12 MR. HAYNES: Page 148, paragraph 380. And if it  
13 helps --

14 THE COURT: Specifically where in this section do  
15 you believe it's referenced or discussed?

16 MR. HAYNES: This whole section, Your Honor, is  
17 about this. My question is actually going to be very simple.  
18 It's just going to ask him if he's aware of the triple play  
19 architecture being mentioned at all in any of the brochures,  
20 but he is talking about the fact that Doctor Cole's features  
21 he's identified do not -- are not used by triple play  
22 architecture.

23 MR. BENNETT: Okay. If that's the question,  
24 then --

25 MR. HAYNES: I'm not going to get into the

1 percentages.

2 MR. BENNETT: If that's the question, then that's  
3 fairly within the report.

4 THE COURT: Given that clarification, you withdraw  
5 your objection?

6 MR. BENNETT: I do.

7 THE COURT: All right. Let's bring the jury back  
8 in, please. And I'll charge this time to the Plaintiff.

9 (Whereupon, the jury entered the courtroom.)

10 THE COURT: Thank you for your cooperation, ladies  
11 and gentlemen. Please be seated.

12 With some clarification, the objection's been withdrawn  
13 so we'll proceed.

14 Go ahead, Mr. Haynes.

15 Q. (BY MR. HAYNES) Doctor Chatterjee, we were discussing  
16 the brochure that Doctor Cole used in his apportionment  
17 analysis. Do you recall that?

18 A. I do.

19 Q. My question to you, sir, is in that brochure that Doctor  
20 Cole pointed to and identified a whole bunch of features that  
21 he claimed were relevant to the '599 Patent, does that  
22 brochure mention the triple play architecture at all?

23 A. No.

24 MR. HAYNES: I'll pass the witness, Your Honor.

25 THE COURT: All right. Cross examination?



1 CROSS EXAMINATION

2 BY MR. BENNETT:

3 Q. Good morning, Doctor Chatterjee.

4 A. Good morning.

5 Q. I wanted to spend some time with your -- a little more  
6 time with your background and your resume, or CV as it's  
7 known. Do you have that there on the podium with you if you  
8 need it for your reference?

9 Looking over your CV, I mean, you've been deposed over 50  
10 times as an expert?

11 A. I believe so.

12 Q. And you'll agree with me that most of the engagements  
13 that you've had, at least the ones listed on your CV, are for  
14 the party defending patent infringement or trying to  
15 invalidate patents. Right?

16 A. I don't believe so. I believe it's roughly 50/50,  
17 perhaps a little bit different than that.

18 Q. Why don't we flip to is it -- it's Exhibit 1 to your  
19 report, and page 12 of your report -- or, sorry, page 12 of  
20 that document.

21 A. My opening report?

22 Q. Or your rebuttal report. I think it's Exhibit 1 in  
23 either.

24 A. Okay. You said page 12?

25 Q. Correct.

1 A. Page 12 or paragraph 12?

2 Q. Page 12 of Exhibit 1 to your report, which is your CV.

3 A. Oh. I don't think the exhibit is here.

4 Q. All right.

5 MR. BENNETT: Your Honor, may I approach?

6 THE COURT: You may.

7 Q. (BY MR. BENNETT) You should see Exhibit 1 under one of  
8 the tabs of that binder.

9 A. Okay. I found it.

10 Q. All right. And please flip to page 12.

11 A. Okay.

12 Q. Now, as I read your CV or your resume, it goes from -- on  
13 page 12, it starts with the most recent engagement you've had  
14 as an expert, and it goes backward in time so that the earlier  
15 part of your CV contains the engagements you've had that have  
16 been the longest -- you know, that were a long time ago. Is  
17 that right? Reverse chronological order.

18 A. Yes.

19 Q. Okay. So starting with the expert engagement, case name  
20 Apple Inc. v. Spire or Speir Technologies, do you see that?

21 A. I do.

22 Q. You were hired by Apple in that case?

23 A. Yes.

24 Q. And that case was -- Apple had been sued by Speir?

25 A. Yes.

1 Q. And you were working for Apple to invalidate those  
2 patents.

3 A. That if I remember correctly was an IPR.

4 Q. All right. An IPR is a proceeding that companies like  
5 Apple file when they're accused of patent infringement to try  
6 to invalidate the patent they're accused of infringing.  
7 Right?

8 A. Yes, if they believe the patent is invalid.

9 Q. And then the case prior to that Consumeron, LLC, v.  
10 MapleBear, Inc. You were hired by the Defendant in that case.

11 A. Yes.

12 Q. And they not only denied infringement but also sought to  
13 invalidate the patents in that case. Right?

14 A. Yes.

15 Q. And then prior to that, you were hired by Jam City in  
16 Groove Digital v. Jam City. Right?

17 A. Yes.

18 Q. And you worked with Jam City, Inc. Right?

19 A. Yes.

20 Q. And they were defending patent infringement?

21 A. Yes.

22 Q. And you were trying to help them invalidate the patents  
23 they were accused of infringing. Right?

24 A. I was not helping them. I was providing my opinions.

25 Q. To assist them in invalidating the patents.

1 A. Because my analysis showed that they were invalid.

2 Q. And the reason you provided your analysis was to help Jam  
3 City invalidate those patents.

4 A. I wasn't helping them. Like I said, I provide  
5 independent opinions; and, yes, based on my analysis, I  
6 believed that the patents were invalid.

7 Q. Okay. Prior to that, you worked with Lyft, Inc., in  
8 Lyft, Inc. v. AGIS Software. Do you see that?

9 A. I do.

10 Q. And that was another -- another situation where Lyft had  
11 been accused of infringing patents. Right?

12 A. Yes.

13 Q. And you were assisting Lyft in providing opinions that  
14 went toward not only non-infringement but invalidating  
15 patents. Right?

16 A. No, that's not correct.

17 Q. Okay. How about the case before that, Fintiv v. PayPal  
18 Holdings?

19 A. Yes, Fintiv.

20 Q. Fintiv. All right. You were hired by PayPal in that  
21 case?

22 A. Yes.

23 Q. And you were helping them defend claims of infringement  
24 and pursuing invalidity defenses. Right?

25 A. Again, I provided my opinions, yes.

1 Q. And maybe I'll phrase it this way. And then PayPal was  
2 taking your opinions to use to invalidate patents.

3 A. Yes. That one I believe was also an IPR.

4 Q. Okay. I mean, I can keep going. There is lots, but I  
5 mean, looking at the first page 12, page 11, all of those, 1,  
6 2, 3, 4, 5, 6 -- I mean, almost two dozen you represented the  
7 defense. Right?

8 A. Yes, and these are only the public listings.

9 Q. Well, that's all we're talking about. Right? Public  
10 listings?

11 A. Well, I'm just making the clarification that what's on my  
12 public CV are public cases.

13 Q. All right. And if you'll turn to page 10 of your CV,  
14 there's another dozen where you were hired by the party  
15 defending against patent infringement or asserting invalidity  
16 defenses. Right? With maybe one exception at the top.

17 A. No, I disagree. Some of these are not patent cases.

18 Q. Okay. *Dolby Laboratories v. Intertrust* was a patent  
19 case?

20 A. Yes, that one was.

21 Q. And you represented the party opposing infringement and  
22 trying to invalidate the patent. Right?

23 A. For that one, I was retained by Dolby.

24 Q. And Dolby was trying to invalidate a patent. Right? One  
25 or more.

1 A. Yeah -- yes. There were -- I -- again, I provided my  
2 opinions on patent validity.

3 Q. Which Dolby then used to try to invalidate a patent.

4 A. Again, I believe those were IPRs, yes.

5 Q. Okay. You mentioned earlier that you had obtained 10  
6 U.S. patents. Right?

7 A. Yes.

8 Q. And when you obtained those patents, you assigned them to  
9 a company also listed on your CV. Right?

10 A. Yes.

11 Q. And that would be S3G Technology, LLC. Correct?

12 A. Yes.

13 Q. And, in fact, the 10 U.S. patents that you've obtained,  
14 each one of those have been assigned to S3G Technology.  
15 Right?

16 A. Ultimately, yes.

17 Q. All right. And S3G Technology, LLC, has asserted patent  
18 infringement actions against other companies in connection  
19 with those 10 patents. Right?

20 A. It has.

21 Q. And that's because, as a patent holder, you'll agree that  
22 when you feel like someone is infringing on your technology,  
23 you need to protect that technology. Right?

24 A. I agree. I strongly believe in the patent system. And  
25 if a patent is valid and if it's actually being infringed, I

1 strongly believe with that.

2 Q. And companies that seek to use their patents to license  
3 them to others, that's a legitimate form of protecting  
4 property. Right?

5 A. Again, yes. If it's a valid patent that's being  
6 infringed, a hundred percent agree.

7 Q. And I'm glad you said that. During the course of your  
8 examination, you did not challenge the validity of the '599  
9 Patent. Correct?

10 A. I did not to the jury offer opinions related to validity.

11 Q. Correct. And you -- so let me just rephrase that or ask  
12 it one more time and get a clean answer.

13 You have said nothing today as we sit here now about the  
14 '599 Patent being invalid. Right?

15 A. I don't believe so, no.

16 Q. All right. And in rendering your opinions today and  
17 maybe I -- there was no discussion about source code.  
18 Correct?

19 A. I disagree.

20 Q. Well, your analysis of source code. Mr. Haynes didn't  
21 put up a slide and you walked through Nokia's source code or  
22 anything like that. That didn't happen today. Right?

23 A. No, but I did review source code.

24 Q. I understand.

25 Mr. Haynes mentioned some standards, and you've been in

1 trial as we've discussed standards throughout the trial.

2 Right?

3 A. I have been attending the trial every day.

4 Q. And you've heard the discussion of standards?

5 A. I have.

6 Q. Okay. The RFC standards. We've seen a lot of those.

7 Right?

8 A. Yes. I believe those are the IETF standards.

9 Q. All right. And you agree that it is possible for an  
10 infringer to practice a standard and still infringe the claims  
11 of a patent.

12 A. If the standard is practicing the patent, yes.

13 Q. Well, there's many ways to implement a standard. Right?

14 A. It depends on the standard, but I would generally agree  
15 with you.

16 Q. As a general matter.

17 A. As a general matter, it could be implemented in software,  
18 it could be implemented in hardware, yes.

19 Q. And one company may implement a standard in a way that  
20 doesn't infringe. Right?

21 A. I -- that's a hard question to answer. It's unlikely.

22 Q. It's unlikely that a company can implement a standard in  
23 a way that doesn't infringe? That's your testimony?

24 A. My testimony is that typically standards define protocols  
25 that are used within the industry. And so what happens with



1 standards is that both sides have to implement it the same  
2 way; otherwise, they can't talk to each other.

3 It's like if you and I are speaking in English, we both  
4 have to speak the same English; otherwise, we can't  
5 communicate.

6 Q. Right. But the language doesn't necessarily determine  
7 implementation. Right? As you said, there's lots of ways  
8 that a standard may be implemented--software or hardware?

9 A. I agree. So if it's about software or hardware, yes, I  
10 agree.

11 Q. Okay. Doctor Chatterjee, you spoke this morning or  
12 testified this morning about ring networks. A ring network is  
13 a network where each node or where a node is connected to two  
14 other network nodes such that there is no beginning and end.  
15 Correct?

16 A. Yes, that -- it's a closed loop, like I mentioned.

17 Q. Okay. Let me show you Exhibit -- Joint Exhibit 46a.

18 MR. BENNETT: Mr. Jarrett, at page 39.

19 Q. (BY MR. BENNETT) So this is the triple play architecture  
20 manual that's been discussed some. I just want to spend some  
21 time looking at figure 1 here.

22 MR. BENNETT: If you'll enlarge the first half of  
23 that screen, Mr. Jarrett.

24 Q. (BY MR. BENNETT) I want to focus just on this piece  
25 here.

1 So we've got a BSR which you've mentioned before. Right?

2 A. Yes.

3 Q. All right. And it's connected to a BSA to its left and  
4 right, or top and bottom, however you like it. Correct?

5 A. Where are you looking? There are three BSAs in this --

6 Q. Right.

7 A. Yes.

8 Q. And those would be connected together. Do you agree with  
9 that?

10 A. The BSAs are not connected together.

11 Q. In this diagram, your testimony is that BSAs are not  
12 connected together?

13 A. This is showing, consistent with that other diagram  
14 figure 2 that we looked at, it's simply showing the VPLS --

15 THE COURT: Doctor Chatterjee, he simply asked you  
16 do you agree they are or are not connected. He didn't ask you  
17 to explain why you don't think they are connected. You need  
18 to limit your answer to the question asked, please.

19 THE WITNESS: Okay.

20 THE COURT: Either restate the question or move on,  
21 Mr. Bennett.

22 MR. BENNETT: I'll move on, Your Honor.

23 Q. (BY MR. BENNETT) You mentioned figure 2 --

24 MR. BENNETT: -- which is, Mr. Jarrett, page 41 of  
25 Joint Exhibit 46a.

1 Q. (BY MR. BENNETT) And we discussed this some already.  
2 The jury's seen it a bunch of times. I just want to ask you a  
3 couple of quick questions.

4 Would you agree with me, Doctor Chatterjee, that VPLS  
5 allows automatic configuration regardless of whether fiber  
6 is -- the fiber connections or hub or spoke are a ring  
7 configuration?

8 A. It may.

9 Q. Okay. And figure 41 or, excuse me, figure 2 on page 41  
10 of Joint Exhibit 46a, we're discussing a VPLS. Right?

11 THE COURT: Could you slow down a little bit, Mr.  
12 Bennett?

13 MR. BENNETT: Yes, Your Honor.

14 THE WITNESS: It is showing secure VPLS  
15 infrastructure.

16 MR. BENNETT: And will you turn the page, Mr.  
17 Jarrett?

18 Q. (BY MR. BENNETT) And, again, I don't want to spend too  
19 much time. We've seen this plenty during the trial.

20 THE COURT: Counsel, there's no need to tell us how  
21 many times we've seen things. Sidebar comments are not  
22 appropriate. Ask a question of the witness, please.

23 MR. BENNETT: I will.

24 Mr. Jarrett, the top paragraph, if you'll zoom in there,  
25 please, and highlight the language "one of the advantages" and

1 that sentence.

2 Q. (BY MR. BENNETT) All right. So during your testimony,  
3 you focused on this word 'over' and its meaning. Right?

4 A. Yes, I did.

5 Q. All right. "One of the advantages of using VPLS for this  
6 application is that VPLS instances can be automatically  
7 established over both hub-and-spoke and ring topologies  
8 providing sub-50 millisecond resilience." Right?

9 A. Yes.

10 Q. Okay. And you'll agree with me that two people can read  
11 the same language and reach a different conclusion about what  
12 it means, as a general matter.

13 A. As a general matter, I agree with you.

14 Q. All right. And to know what conclusion or what the  
15 language means, we might look to other sources or other  
16 evidence to see which meaning applies to that particular  
17 language. Right?

18 A. In general, yes.

19 Q. Now, you talked some about fiber networks.

20 MR. BENNETT: You can take it down, Mr. Jarrett.

21 Q. (BY MR. BENNETT) Would you agree that the fiber  
22 networks -- establishing a fiber network can be cost  
23 prohibitive depending on the distance of the network lines you  
24 have to establish?

25 A. It may be.

1 Q. Well, let me ask it this way. Fiber connections have  
2 been around for a very long time. Right?

3 A. Yes, fiber technology has been around.

4 Q. But even still, not every area in, let's say, Texas has  
5 fiber connections. Right?

6 A. Yes. I believe it's not only limited to Texas. I  
7 believe there are many places that don't have it.

8 Q. But there are places--again, we'll just stick with  
9 Texas--within Texas that do have fiberoptic cable that runs  
10 the internet at their businesses or their homes. Right?

11 A. I would assume so, yes.

12 Q. All right. And part of the reason why fiber hasn't been  
13 proliferated is because it is expensive to lay over great  
14 distances. Right?

15 A. Again, it can be.

16 Q. All right. And so if you're a business that has an  
17 expansive campus or a business like cable operators whose  
18 businesses and the lines they have to stretch can go for  
19 hundreds, if not thousands, of miles, establishing fiber may  
20 be something to consider when you're deciding upon a topology.  
21 Right?

22 A. I don't think I understood your question.

23 Q. Let me re-ask it.

24 MR. BENNETT: And let's go to figure 2, please, Mr.  
25 Jarrett, in JX 46a at 41?

1 Q. (BY MR. BENNETT) All right. If I heard correctly or  
2 noted it correctly, I think what I heard you say is the  
3 connections in this particular diagram were fiber. Right?

4 A. Yes.

5 Q. Okay. So my question is, if a business operator that's  
6 using Nokia equipment elects to use something other than  
7 fiber, they can still establish a network through another  
8 means. Right?

9 A. Yes. Fiber is not the only physical connection.

10 Q. And they could use a hub-and-spoke topology. Right?

11 A. That's where you're losing me.

12 Q. Okay.

13 A. We're talking about a physical wire.

14 Q. Right. So you don't -- let me ask it this way. You can  
15 establish a hub-and-spoke topology, network, without a fiber  
16 requirement.

17 A. Hub-and-spoke can be used with different physical layers,  
18 yes.

19 Q. And that's true of a mesh network, too. Right?

20 A. Yes.

21 Q. And that's true of a ring network. Right?

22 A. Yes.

23 Q. You can also have networks where the nodes are connected  
24 some with fiber -- in the same network, same topology, some  
25 with fiber and some with other kinds of connections, too.

1 Right?

2 A. Typically not within the same network, but yes, there can  
3 be different networks that have different physical layers.

4 Q. I want to just briefly touch on one issue you mentioned.

5 MR. BENNETT: Mr. Jarrett, please go to Joint  
6 Exhibit 11, please, page 36.

7 Q. (BY MR. BENNETT) All right. You mentioned OSPF with Mr.  
8 Haynes in your discussion with him. Do you remember that?

9 A. I do.

10 Q. Okay. I want to focus --

11 MR. BENNETT: Mr. Jarrett, highlight in the second  
12 paragraph, "The routing in the AS takes place on two levels,  
13 depending on whether the source and destination of a packet  
14 reside in the same area (intra-area routing) or different  
15 areas (inter-area routing)."

16 Do you see that?

17 A. I do.

18 Q. Sending data to the same area is known as intra-area  
19 routing. True?

20 A. Yes, routing data within the same area, yes.

21 Q. All right. And sending data to a different area is known  
22 as inter-area routing. Correct?

23 A. That is one name, yes.

24 Q. And this particular portion of the Nokia's manual is  
25 discussing routing data in both of those fashions--intra-area

1 and inter-area. Correct?

2 A. Yes. It's providing a high-level summary.

3 Q. And an area border -- excuse me, an area border router is  
4 a router that exists between two areas.

5 A. Yes.

6 Q. And those areas are based on topology.

7 A. I'm not sure what you mean by based on, but they can have  
8 different topologies, yes.

9 Q. So in other words -- okay.

10 MR. BENNETT: I'll pass.

11 THE COURT: Further direct?

12 MR. HAYNES: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. HAYNES:

15 Q. Doctor Chatterjee, you were asked about a few of the  
16 cases that are on your CV. Do you recall that testimony?

17 A. I do.

18 Q. There were a lot more cases on your CV than you were  
19 asked about. Is that fair?

20 A. Yes.

21 Q. In the cases you weren't asked about, did you represent  
22 the plaintiff in any of those cases?

23 A. Many, many cases.

24 Q. If somebody comes to you and says, Doctor Chatterjee,  
25 I've got a problem, somebody has made an allegation against



1 me, I'd like you to help me, does it matter to you whether  
2 that person is a plaintiff or defendant?

3 A. No. The facts are what matters to me.

4 Q. And regardless of who you're representing, a plaintiff or  
5 a defendant, does that have an impact on the opinions that you  
6 provide?

7 A. No. I simply analyze the facts and set forth my  
8 opinions.

9 MR. HAYNES: Can we bring up JX 46a at page 39? Can  
10 we highlight the right-hand side or just bring up the whole  
11 figure? That's fine.

12 Q. (BY MR. HAYNES) Do you recall Mr. Bennett asked you some  
13 questions about this figure?

14 A. Yes.

15 Q. And specifically I think he asked you about what's shown  
16 right over here. Do you see that?

17 A. I do.

18 Q. Do you see here there is a circle drawn inside? It's  
19 labeled VPLS. Do you see that?

20 A. I do.

21 Q. Can you explain to the jury what that represents?

22 A. That is similar to the other figure that we saw where  
23 it's simply identifying the secure VPLS infrastructure. And  
24 like I explained, the secure VPLS infrastructure is that  
25 secure area where things like denial-of-service attacks and

1 things like that cannot happen.

2 Q. You understand that this figure 1 is coming from the same  
3 document as the figure 2 that we've been talking about earlier  
4 today?

5 A. Yes.

6 Q. Is this describing the same triple play service delivery  
7 architecture or a different triple play service delivery  
8 architecture?

9 A. The same Nokia triple play services delivery  
10 architecture.

11 Q. Doctor Chatterjee, in Nokia's triple play services  
12 delivery architecture based on your review of the --

13 THE COURT: Mr. Haynes, slow down, please?

14 MR. HAYNES: Sorry, Your Honor.

15 Q. (BY MR. HAYNES) Doctor Chatterjee, in your analysis in  
16 this case in your review of the entirety of the document, what  
17 is your understanding of what the connections between the BSAs  
18 and the BSR in this figure actually are?

19 A. Between the BSAs and the BSRs, they are layer 2 mesh.

20 Q. Does the circle in this figure illustrate a layer 2  
21 connection of any kind?

22 A. No, it does not.

23 MR. HAYNES: If we could go to JX 11 at page 36.

24 Q. (BY MR. HAYNES) Do you recall being asked some questions  
25 about this document?

1 A. Yes.

2 Q. There was a mention of something called an ABR, an area  
3 border router. Do you see that?

4 A. I do.

5 Q. In your review of the documentation of Nokia's triple  
6 play architecture, have you seen any -- either the BSA or the  
7 BSR referred to as an area border router?

8 A. No.

9 Q. Is the BSR an area border router?

10 A. No.

11 Q. In OSPF, when we're talking about areas, what are we  
12 talking about?

13 A. Basically networks, portions of networks.

14 Q. And if you're going to have this inter-area routing, do  
15 you need to have an area border router that is common to those  
16 two networks?

17 A. Yes.

18 Q. You were also asked a lot of questions about hypothetical  
19 networks. Do you recall that?

20 A. I do.

21 Q. In the actual triple play architecture, is there a layer  
22 2 ring network?

23 A. No. It's a layer 2 mesh.

24 MR. HAYNES: I'll pass the witness, Your Honor.

25 THE COURT: Further cross examination?

1 MR. BENNETT: No, Your Honor.

2 THE COURT: You may step down, Doctor Chatterjee.

3 THE WITNESS: Thank you.

4 THE COURT: Ladies and gentlemen of the jury, you  
5 got a brief recess a few minutes ago, but none of the rest of  
6 us did so we're going to take another recess at this time  
7 before we proceed with the next witness.

8 If you'll simply leave your notebooks in your chairs,  
9 follow all my instructions, and we'll be back to continue with  
10 the next Defense witness shortly.

11 The jury's excused for recess.

12 (Whereupon, the jury left the courtroom.)

13 THE COURT: Mr. Haynes, you still have a short  
14 deposition before Ms. Bennis. Is that correct?

15 MR. HAYNES: We do, Your Honor. It's only four  
16 minutes.

17 MR. DACUS: Your Honor, also may Doctor Chatterjee  
18 be excused? And, in addition, I don't think we formally asked  
19 that Doctor Jeffay be excused yesterday.

20 THE COURT: All right. I assume without objection,  
21 both of those witnesses are excused.

22 MR. DACUS: Thank you, Your Honor.

23 THE COURT: We'll keep this recess relatively short,  
24 counsel.

25 We stand in recess.

1 (Brief recess.)

2 THE COURT: Be seated, please.

3 Counsel, before I bring the jury back in, let me update  
4 you. Plaintiff at this juncture has 3 hours and 23 minutes  
5 remaining; Defendant has 1 hour and 51 minutes remaining.

6 All right. Are you prepared to continue with the  
7 Defendant's case in chief, Mr. Haynes?

8 MR. DACUS: Yes, Your Honor.

9 THE COURT: And Mr. Dacus?

10 MR. DACUS: Yes, Your Honor.

11 THE COURT: All right. Let's bring in the jury.

12 MR. DACUS: I aspire to be Mr. Haynes.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: Please be seated.

15 All right. Defendant, call your next witness.

16 MR. DACUS: Thank you, Your Honor.

17 Nokia calls by video deposition Yehuda Binder. Mr.  
18 Binder is the managing principal owner of Orckit IP. And the  
19 time of the deposition, Your Honor, is 4 minutes and 43  
20 seconds, all of that time is allotted to Defendant, Your  
21 Honor.

22 THE COURT: All right. Proceed with this witness by  
23 deposition.

24 YEHUDA BINDER,

25 BY VIDEO DEPOSITION

1 Q. Can you please state your full name for the record:

2 A. Yehuda Binder, Y-E-H-U-D-A, last name Binder,  
3 B-I-N-D-E-R.

4 Q. Okay. And you understand that you're here today to  
5 testify related to a litigation in which Smart Path has  
6 asserted certain patents against Nokia?

7 A. This is my understanding.

8 Q. And you're here today to testify as the corporate  
9 representative for Orckit IP?

10 A. Correct.

11 Q. And Orckit -- excuse me. Orckit IP is the entity that  
12 sold the asserted patents to Smart Path. Correct?

13 A. Correct.

14 Q. And Orckit IP obtained the patents originally from an  
15 entity named Orckit-Corrigent. Is that correct?

16 A. I am not sure. I think it was Orckit communication and  
17 Orckit-Corrigent.

18 Q. What would you say is the business of Orckit IP?

19 A. To make money.

20 Q. Is the business of Orckit IP to monetize patents?

21 A. Generally, yes.

22 Q. Does Orckit IP sell any products?

23 A. No.

24 Q. I think the question was: Did Mr. Tamir contribute any  
25 money towards the purchase price for the patents to -- from

1 Orckit Communications to Orckit IP?

2 A. Yes. Mr. Tamir put the \$1.35 million, paid this money to  
3 the liquidator. This is true.

4 Q. I think we can go to Exhibit 14, if the technician was  
5 able to.

6 Are you familiar with this document?

7 A. Again, I didn't check it word by word, but it looks like  
8 the sale agreement by Orckit IP from the liquidator.

9 Q. If you flip to the last page, page 12, do you see that  
10 you signed this document?

11 A. Yes.

12 Q. Okay. And is this the agreement for Orckit IP to  
13 purchase the Orckit Communications patents?

14 A. Probably.

15 Q. Do you understand that this agreement covered the Smart  
16 Path patents?

17 A. If this is the agreement, then -- if this is the  
18 agreement for the sale of the patent, the Smart Path, I  
19 believe, my understanding is, at least, that the Smart Path  
20 patents are part of this deal, yes.

21 Q. Okay. Let's go to Section 6. Do you see section 6.1?

22 A. Yes.

23 Q. Do you see how it refers to \$1.35 million?

24 A. I do.

25 Q. Is that \$1.35 million that is referred to there the money

1 that Mr. Tamir contributed to the purchase of the patents?

2 A. That's my understanding.

3 Q. But what is your general understanding as to whether Mr.  
4 Tamir receives -- receives proceeds from litigation with  
5 Nokia?

6 A. What is a general understanding that personally  
7 me -- I -- I and him, we split the revenues received from  
8 Nokia or from any other stock, from Orckit IP and other.

9 Q. So is there an informal agreement that you will split any  
10 proceeds from the Nokia litigations with Mr. Tamir?

11 A. On a personal level, yes.

12 Q. I didn't quite catch that. Can you repeat it?

13 A. I said the agreement is on a personal level. It's not  
14 agreement with Orckit IP.

15 Q. What is the personal agreement between you and Mr. Tamir  
16 regarding sharing of proceeds from any Nokia litigation?

17 A. 80/20. On the personal agreement, again.

18 Q. As of today, has Orckit IP received any compensation for  
19 litigation proceeds from the Smart Path patents?

20 A. No.

21 Q. As of today, have you personally received any  
22 compensation for any litigation proceeds from the Smart Path  
23 patents?

24 A. No.

25 THE COURT: Does that complete this witness by



1 deposition?

2 MR. DACUS: It does, Your Honor.

3 THE COURT: All right. Call your next witness,  
4 please, Defendant.

5 MR. DACUS: Thank you, Your Honor. At this time we  
6 call Melissa Bennis.

7 THE COURT: All right. Ms. Bennis, if you'll come  
8 forward and be sworn by the Courtroom Deputy, please.

9 (Whereupon, the oath was administered by the Clerk.)

10 THE COURT: Please come around, have a seat on the  
11 witness stand.

12 MR. DACUS: Mr. Carrillo, can we pull up the slides?  
13 Thank you.

14 THE COURT: Are there binders to distribute?

15 MR. DACUS: We've already distributed them, Your  
16 Honor. Thank you very much.

17 THE COURT: All right. Counsel, you may proceed  
18 with direct examination.

19 MR. DACUS: Thank you, Your Honor.

20 MELISSA BENNIS,

21 having been duly sworn, testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MR. DACUS:

24 Q. Ms. Bennis, would you introduce yourself to the jury,  
25 please?

1 A. Yes, of course. Good morning. My name is Melissa  
2 Bennis, and I live and work in Chicago.

3 Q. Before we get to the details of your testimony today, can  
4 you tell the jury at a high level what you've been asked to do  
5 in this case and what you're here to testify about, please?

6 A. Yes. So I have been asked by Nokia to assess the amount  
7 of damages, if any, that would be appropriate to award if and  
8 only if the patents are found to be valid and infringed by  
9 Nokia.

10 Q. Have you also been asked to review and analyze the  
11 royalty or damages amount that Mr. Dell put forward?

12 A. Yes, I have, and I have done that.

13 Q. Okay. Before we cover those opinions, I'd like to get  
14 some background from you. Is that okay?

15 A. Yes.

16 Q. Tell the jury where you work.

17 A. I work at a firm called Stout. I'm a managing director  
18 there in the Chicago office.

19 Q. Okay. And what kind of work do you do at Stout?

20 A. Stout itself provides a variety of financial advisory  
21 services, things like business valuations, assistance with  
22 mergers and acquisitions. That's with companies.

23 There's various individuals like myself that help in the  
24 context of litigation, as an example, assessing the financial  
25 aspects.

1 THE COURT: Ms. Bennis, if you don't mind, pull the  
2 microphone a little closer to you, please.

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 Let's continue counsel.

6 MR. DACUS: Thank you, Your Honor.

7 Q. (BY MR. DACUS) Tell the jury a little bit about where  
8 you grew up and your educational background, where you went to  
9 college.

10 A. Sure. So I moved around the Midwest growing up in  
11 several states. Eventually my family landed in the Chicago  
12 area. So after high school, I attended the University of  
13 Illinois where I earned a Bachelor of Science in finance with  
14 an emphasis in accounting, with honors.

15 Q. What did you do after college?

16 A. So while I was still at the University of Illinois, I was  
17 recruited to join Arthur Andersen, which at the point in time  
18 was one of the big public accounting firms in our country in  
19 their specialty consulting practice.

20 Q. Do you have any degrees beyond the Bachelor's that you  
21 got at the University of Illinois?

22 A. Yes. So while I was pursuing my career at Andersen, I  
23 applied for and was accepted into the graduate program at  
24 Northwestern University, which is another Big 10 university in  
25 the Chicago area. And there I earned my MBA, or my Master's

1 in Business Administration, with majors in accounting and  
2 marketing and management and strategy while I was still  
3 pursuing my career at an Andersen.

4 Q. Do you have any personal professional certifications?

5 A. Yes. I am a licensed certified public accountant, or  
6 CPA, as it's often called.

7 Q. Can you give the jury some sense or indication of your  
8 experience in calculating patent damages or reasonable  
9 royalties in the litigation context that we're here in today?

10 A. So I have been doing this type of work for 25 years now.  
11 And throughout the course of my career, I have been involved  
12 in the computation and the assessment of damages in nearly 200  
13 cases.

14 Q. Okay. We've talked about professional certifications.  
15 Are you a member of any professional associations or  
16 organizations?

17 A. I am. I'm a member of the Licensing Executive  
18 Society--we've heard a lot of acronyms--often referred to as  
19 LES. I'm also a member as a CPA of the American Institute of  
20 Certified Public Accountants. I also am a member of the  
21 Illinois CPA Society.

22 And I also am an associate member of the American Bar  
23 Association, which is a legal association, but as a  
24 non-lawyer. I like to keep up with the reading and the case  
25 law damages that affects what I do on a day-to-day basis.

1 Q. Have you been recognized or received any awards  
2 for -- during your professional career?

3 A. I have. We've heard mention of the IAM Patent 1000,  
4 which is a group within the legal arena. And by them, I have  
5 been honored for the last six years running as a recommended  
6 economic expert.

7 I also was honored several years ago by the Illinois CPA  
8 Society as a woman to watch in the CPA industry.

9 MR. DACUS: Your Honor, at this time we would offer  
10 Ms. Bennis, based on her education, training, and experience,  
11 as an expert in patent valuation and damages.

12 THE COURT: Is there objection?

13 MS. STAHL: No objection, Your Honor.

14 THE COURT: Without objection, the Court will  
15 recognize this witness as an expert in those designated  
16 fields.

17 Please continue.

18 MR. DACUS: Thank you, Your Honor.

19 Q. (BY MR. DACUS) Ms. Bennis, before we dig into the  
20 details of your opinion, can you tell the jury whether or not  
21 you've reached any opinions and conclusions in this case if  
22 they were to get to the damages question as to what a  
23 reasonable royalty would be?

24 A. Yes. So I have -- I have developed a number of opinions,  
25 but it really boils down to the one primary opinion. So by

1 now we've heard Mr. Dell testify as to his opinion on damages,  
2 and that would be that there should be a running royalty  
3 percentage, different for each patent, applied to all of the  
4 accused products over a long period of time.

5 But I think, given what we are asked to consider here and  
6 the evidence in the case, that the parties would have come  
7 together and negotiated just a single upfront lump-sum  
8 agreement of no more than \$1 million.

9 Q. To be clear, because you and I are talking about damages  
10 and evidence, does that mean that Nokia believes that it owes  
11 anything to the Plaintiff Smart Path?

12 A. No. And this is an important distinction because I  
13 understand it seems like a bit of a dichotomy. I don't  
14 understand Nokia to believe that it is infringed or that the  
15 patents are valid. However, for the purposes of the  
16 consideration of damages, I simply assume that there could be  
17 a finding of that since that's the only instance in which this  
18 question would need to be answered.

19 Q. You heard me ask Mr. Dell that if this jury were to reach  
20 damages, the lawyers on the Nokia side want to make sure that  
21 the jury has all the evidence in order to make that  
22 determination. Is that what we're doing here right now?

23 A. Yes.

24 Q. Okay. Let's turn to your analysis. What -- tell us at a  
25 high level what the process is you went through to make a

1 determination of what a reasonable royalty would be in this  
2 case?

3 A. So recall that the reasonable royalty is what the parties  
4 would have come to and agreed upon in the form of a license or  
5 a license agreement for rights for Nokia to practice the  
6 patents.

7 And in order to do that, both I and the jury are asked to  
8 assume that there would be this hypothetical negotiation. So  
9 it didn't really happen, but what it would have looked like  
10 had these parties come together, what pieces of evidence or  
11 what data points would they have had at their fingertips that  
12 would have helped inform them as to what the reasonable  
13 conclusion would have been.

14 Q. You were here when Mr. Dell testified. Correct?

15 A. I was.

16 Q. You heard him say that this hypothetical negotiation  
17 would have taken place in 2013?

18 A. Yes.

19 Q. Do you disagree with that?

20 A. No.

21 Q. Okay.

22 MR. DACUS: Your Honor, may I pull the flip chart  
23 forward even with the document camera?

24 THE COURT: You may.

25 MR. DACUS: Thank you.

1 THE COURT: Can you see that, Ms. Bennis?

2 THE WITNESS: I'm going to scooch over just a touch  
3 so I can see it a little better.

4 MR. DACUS: I don't think we're going to go through  
5 much detail, Your Honor, but --

6 THE COURT: You're the one that wanted to use it.

7 MR. DACUS: Understood. Thank you for helping me.

8 Q. (BY MR. DACUS) Let's do this Ms. Bennis. Let's  
9 start -- do you understand in determining a reasonable royalty  
10 that there are two different types?

11 A. Generally speaking, there are two types that are very  
12 common.

13 Q. And remind us what those two types are?

14 A. One type would be a running royalty where you would take  
15 something like what Mr. Dell suggested, a running element,  
16 whether it's a percentage of sales or a dollar amount applied  
17 to a royalty base to come up with a royalty amount.

18 The other very common element that we're going to talk a  
19 lot about is a lump sum. The parties can come together, they  
20 can talk about the value and other data points and come up  
21 with a single payment that would be fair compensation.

22 Q. Did you in the course of your work look into whether or  
23 not it is more appropriate in this circumstance to award a  
24 lump sum or a reasonable royalty if the jury were to get to  
25 that question?



1 A. Given the evidence in this particular case, I believe  
2 that the parties would have agreed on a lump-sum structure.

3 Q. And why --

4 THE COURT: Let me interrupt, counsel. You said a  
5 lump sum or a reasonable royalty. You mean a lump sum or a  
6 running royalty, did you not?

7 MR. DACUS: I did, Your Honor. Let me --

8 THE COURT: Again, I'm just trying to keep any  
9 confusion out of the case.

10 MR. DACUS: I appreciate the help very much, Your  
11 Honor.

12 THE COURT: Go ahead.

13 Q. (BY MR. DACUS) Let me be clear on my question. Did you  
14 investigate and look into whether or not a lump sum or a  
15 running royalty is more appropriate in this circumstance?

16 A. Yes. Thank you. And exactly I have determined that the  
17 lump sum would be the most appropriate format here to consider  
18 as opposed to a running royalty.

19 Q. And why do you believe that the evidence leads to a lump  
20 sum being more appropriate?

21 A. I'm aware of the evidence in this case that suggests that  
22 Nokia has a preference for paying lump-sum amounts when they  
23 are licensing patents. The agreements, some of which have  
24 been discussed this week, many of which, are all formatted as  
25 a lump-sum structure.

1 And, last, there's administrative benefits to a one-time  
2 lump-sum payment. We heard a little bit about this from Mr.  
3 Patel's video deposition testimony, that with any sort of  
4 running royalty setup, there is ongoing tracking, I believe he  
5 said, that's required of the parties.

6 It would also be required of Nokia to produce sensitive  
7 information on a regular increment to a third party outside of  
8 its own walls. So there's some administrative benefits with  
9 coming together and agreeing on a fair payment and moving on.

10 MR. DACUS: Your Honor, at this time we may need to  
11 discuss some particulars of the licenses. We would ask that  
12 the Court seal the courtroom.

13 THE COURT: Based on that request of counsel and to  
14 protect confidential information, the Court will order the  
15 courtroom sealed.

16 As a part thereof, if you are present and not subject to  
17 the protective order that's been entered, you should exit the  
18 courtroom until it's reopened and unsealed.

19 (Courtroom sealed.)

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(Courtroom unsealed.)

THE COURT: And, ladies and gentlemen, we're going to recess for lunch. If you will carry your notebooks with you to the jury room, follow all my instructions, including not to discuss the case in any way among yourselves, we'll be back after lunch and proceed at that time.

It's about 10 minutes after 12:00. We'll try to reconvene shortly before 1:00.

The jury's excused for lunch at this time.

(Whereupon, the jury left the courtroom.)

THE COURT: Counsel, is there anything we need to take up before we break for lunch?

MR. DACUS: Your Honor, may Ms. Bennis be excused?

THE COURT: She may.

MR. DACUS: Thank you.

THE COURT: We stand in recess for lunch.

(Lunch recess.)

THE COURT: Be seated, please.

Am I correct, Mr. Haynes, that Defendant is ready to rest its case in chief?

1 MR. HAYNES: That's correct, Your Honor.

2 THE COURT: All right. We'll get that announcement  
3 on the record when the jury comes in.

4 And then am I correct, Mr. Bennett, you have two rebuttal  
5 witnesses to call?

6 MR. BENNETT: Yes.

7 THE COURT: All right. Let's bring the jury in,  
8 please.

9 (Whereupon, the jury entered the courtroom.)

10 THE COURT: Please be seated. Welcome back from  
11 lunch, ladies and gentlemen.

12 Defendant, call your next witness.

13 MR. HAYNES: The Defendant rests, Your Honor.

14 THE COURT: All right. The Plaintiff has rested its  
15 case in chief. The Defendant has rested its case in chief.

16 Does the Plaintiff have a rebuttal case to present?

17 MR. BENNETT: We do, Your Honor.

18 THE COURT: Call your first rebuttal witness,  
19 please, Mr. Bennett.

20 MR. BENNETT: Plaintiff calls Dr. Eric Cole.

21 THE COURT: Doctor Cole, if you'll come forward and  
22 return to the witness stand. I'll remind you you remain under  
23 oath.

24 MR. BENNETT: Your Honor, may I approach?

25 THE COURT: You may.

1 Mr. Liddle, you may proceed with direct examination.

2 MR. LIDDLE: Thank you, Your Honor.

3 ERIC COLE, Ph.D.,

4 having been previously sworn, testified further under oath as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. LIDDLE:

8 Q. Doctor Cole, welcome back.

9 A. Thank you.

10 Q. Would you please remind the jury what you testified  
11 earlier this week?

12 A. Earlier this week, I testified on technical apportionment  
13 for the three patents.

14 Q. And did you present technical apportionment with respect  
15 to the asserted patents?

16 A. Yes, I did.

17 Q. And which patents are those?

18 A. Those are -- boy, you are going to test my memory -- the  
19 '010, '599, and '524.

20 Q. '580.

21 A. '580.

22 Q. And did you perform another task in this case?

23 A. Yes, I did.

24 Q. Okay. And what did you do in this case?

25 A. The second task was to read Doctor Jeffay's report on

1       invalidity and provide a rebuttal opinion to that.

2       Q.     And were you in the courtroom yesterday when Doctor  
3       Jeffay testified?

4       A.     Yes, I was.

5       Q.     Now, Doctor Cole, what are the asserted invalidity  
6       defenses that Nokia presented yesterday?

7       A.     They presented for '580 that claims 8, 12, and 15 was  
8       obvious using Aggarwal '266 and RFC 4875, and they also said  
9       that claims 1 and 3 of '010 was obvious based on Shah.

10      Q.     And, Doctor Cole, what about the '599 Patent?

11      A.     They did not present any case on invalidity for the '599.

12      Q.     Okay. And, Doctor Cole, again, please explain what prior  
13      art Nokia is alleging invalidates the '580 Patent?

14      A.     So there's two pieces that need to be combined for the  
15      '580. The first is a patent application written by Aggarwal  
16      ending in '266, and also in RFC internet draft 4875.

17      Q.     And does it appear that these two documents are written  
18      by the same person?

19      A.     They are actually written by the same person, Aggarwal,  
20      and they are also written within six months of each other.

21      Q.     Now, Doctor Cole, were you here during the opening  
22      presentations of the parties?

23      A.     Yes, I was. I was here all week.

24      Q.     And do you recognize this as a slide from Nokia's opening  
25      presentation?

1 A. Yes, I do.

2 Q. And did Nokia allege that if the '580 Patent is  
3 infringed, then it is invalid?

4 A. Yes, they did.

5 Q. And did Nokia tell the jury that Smart Path would point  
6 to the RFC 4875 for infringement?

7 A. Yes, they did.

8 Q. And during the trial, did Smart Path rely on RFC 4875 for  
9 infringement purposes?

10 A. I did not see that from Doctor Valerdi who was the  
11 infringement expert. He did not rely on 4875 during his  
12 direct testimony.

13 Q. And, similarly, did Nokia say that the '580 Patent was  
14 invalid over the RFC 4875 reference?

15 A. Yes, they did.

16 Q. And is Nokia alleging that the RFC invalidates now the  
17 '580 on its own?

18 A. No, they are not.

19 Q. And so how is Nokia trying to invalidate the '580 Patent?

20 A. They are saying that you have to take the Aggarwal draft  
21 and then combine that with pieces of RFC 4875 and that the  
22 combining of those two pieces would have been obvious to  
23 somebody skilled in the art.

24 Q. Now, Doctor Cole, in your opinion, does the combination  
25 of Aggarwal and the RFC invalidate the '580 Patent?

1 A. No, it would not. And also to me it would not be obvious  
2 to combine those two. But even if you did combine those two,  
3 it would still not invalidate the '580.

4 Q. Now, Doctor Cole, in your opinion, why would a person of  
5 ordinary skill in the art not want to combine RFC with  
6 Aggarwal?

7 A. First, when you're combining two different pieces of art,  
8 there needs to be some motivation or reason or a gap or a  
9 problem you're trying to solve. And if you go through  
10 Aggarwal '266, there's nothing in there that would motivate  
11 you to want to expand, change, or combine it with RFC 4875.

12 And also, Doctor Jeffay, he did not mention any specific  
13 improvements that RFC 4875 would add to Aggarwal.

14 Q. And was -- did Doctor Jeffay ever testify that there was  
15 one single product out there that combined these two  
16 references?

17 A. No. He could not identify a single product that worked  
18 in this way during this time period or any system that he knew  
19 of that actually combined these two pieces of art together.

20 Q. Doctor Cole, did you analyze all of the asserted claims  
21 of the '580 Patent?

22 A. Yes. I looked at claims 8, claims 12, and claims 15.

23 Q. And, Doctor Cole, what is your opinion on whether  
24 Aggarwal in combination with the RFC renders obvious the '580  
25 Patent claim 8?



1 A. It does not render obvious the claims of the '580, and  
2 for claim 8, while there are several reasons, there's two main  
3 reasons I'm going to cover today.

4 Q. And just can you give us a summary of what are those two  
5 reasons?

6 A. The first is there's no resource-sharing group for a  
7 first and second tunnel. So you both need a resource-sharing  
8 group and first and second tunnels. And also, according to  
9 the Court's claim construction of call admission control, it's  
10 missing several key components that Doctor Jeffay did not  
11 identify that's required to be in a CAC.

12 Q. And, Doctor Cole, please remind the jury what the '580  
13 Patent is about.

14 A. I believe it was in opening this analogy was used that  
15 the '580 is like if you have a single highway and there's  
16 congestion, you provide a second road that cars can go on to  
17 be able to alleviate the congestion. So '580 is about having  
18 two tunnels, two different tunnels, so if one of the tunnels  
19 is congested, you can then go to the second tunnel.

20 Q. And, Doctor Cole, how would you differentiate that  
21 between the Aggarwal '266 and RFC combination?

22 A. This combination uses a single road. Now, it might add  
23 lanes to the road to make the road wider, but it's still a  
24 single road. It's a single tunnel. They do not go in and  
25 disclose two tunnels, and they do not disclose any resource

1 sharing for allocating the resources across those two tunnels.

2 Q. Now, Doctor Cole, let's focus on the claim language.

3 What does claim 8B require?

4 A. It requires several things, but what I focused on was the  
5 area in pink. It requires resource sharing group of at least  
6 a first and second tunnels. So you need to have two tunnels  
7 and a resource-sharing group across them.

8 Q. Now, does the Aggarwal reference have a resource-sharing  
9 group with a first and second tunnel?

10 A. No, it does not.

11 Q. And how do you know that?

12 A. Because if we start off by looking at Aggarwal, it does  
13 not share resources between tunnels, and if you even look at  
14 paragraph 0076, it says that they belong to the same P2MP LSP  
15 tunnel, and they're also talking about the sharing resources  
16 across a single tunnel, not multiple tunnels.

17 Q. And, Doctor Cole, did you hear any testimony from Doctor  
18 Jeffay about combining Aggarwal '266 with the 4875 to come up  
19 with the '580 Patent?

20 A. He talked about combining them, but he didn't go in and  
21 provide any specific details of how by combining them would  
22 have been obvious that there would have been a motivation and  
23 that, even if you do, they do fail to meet the element of the  
24 '580 Patent.

25 Q. And, Doctor Cole, just to remind the jury, whose burden

1 is it to prove invalidity of the patents?

2 A. With invalidity, the burden is on the Defendant. So  
3 Doctor Jeffay had the burden to prove that each and every  
4 element was met by prior art to prove it invalid. That's why  
5 in my testimony today, I'm just rebutting and providing some  
6 key points that are missing. But the burden of proving was on  
7 the Defendant.

8 Q. Doctor Cole, let's go to the next claim element that you  
9 analyzed.

10 Did you also analyze the '580 Patent claim 8D?

11 A. Yes, I did.

12 Q. And what is your opinion on claim 8D?

13 A. That Aggarwal '266 and RFC 4875 fails to render claim 8  
14 obvious.

15 Q. Okay. And did the Court construe the CAC module?

16 A. Yes. So that's what I'm going to focus on, the call  
17 admission control, sometimes called CAC module. And what's  
18 important here is that the Court construed this term to have a  
19 very specific meaning which needs to be followed in proving  
20 the claim.

21 Q. And so in the construction of CAC module, what is the  
22 structure that is required for -- to show invalidity?

23 A. A processor programmed to allocate shared resources among  
24 tunnels having identical SGI values and equivalents thereof,  
25 and what I really want to focus in on is identical. They have

1 to be identical SGI values.

2 Q. And, Doctor Cole, did you hear any testimony from Doctor  
3 Jeffay that there was any evidence of identical SGI values?

4 A. No, he did not mention or cover anything in Aggarwal or  
5 RFC 4875 that talked about identical SGI values.

6 Q. What did -- what did Doctor Jeffay actually point to?

7 A. He pointed to the RFC 4875 draft that has some generic  
8 language, but that language is not sufficient to cover  
9 identical SGI values. And if you remember, one of the themes  
10 in this case is details matter, and if there's a court's claim  
11 construction, you have to meet each and every element in order  
12 to prove invalidity.

13 Q. Doctor Cole, what's your overall opinion whether claim 8  
14 is rendered obvious by Aggarwal in combination with the RFC?

15 A. Claim 8 is not rendered obvious for all of the reasons  
16 that we've discussed this afternoon.

17 Q. And, Doctor Cole, did you also analyze claim 12?

18 A. Yes, I did.

19 Q. And do you think -- in your opinion is this claim valid  
20 over the combination of Aggarwal and the RFC?

21 A. Yes. So claim 12, as was discussed, is a dependent  
22 claim, so it's dependent on claim 8. And what Doctor Jeffay  
23 said was because he thought claim 8 was invalid, that would  
24 make claim 12 invalid. But what I just showed you is that  
25 claim 8 is actually valid, which means that claim 12 would

1 also be valid.

2 Q. Now, what is the difference between claim 8 and claim 15?

3 A. So they are essentially the same. There is a couple of  
4 different pieces. For example, claim 8 has a processor. But,  
5 overall, the language as you saw this week is very, very  
6 similar.

7 Q. And so do your reasons on -- that you just opined apply  
8 also apply to claim 15 with regard to the invalidity of the  
9 patent?

10 A. Yes, because all of the points that Doctor Jeffay made on  
11 why claim 8 was invalid are the same exact arguments for claim  
12 15. So based on my discussion of why those were not obvious  
13 and why claim 8 is valid would also apply to why claim 15 is,  
14 indeed, valid.

15 Q. Doctor Cole, did you also analyze the '010 Patent?

16 A. Yes, I did.

17 Q. And what is Nokia's theory of invalidity with respect to  
18 the '010 Patent?

19 A. Nokia's opinion is that the '010 is invalid because it's  
20 obvious in light of Shah.

21 Q. And, Doctor Cole, what is your opinion of this?

22 A. That the '010 Patent is valid over Shah because Shah  
23 teaches something different and there is several key elements  
24 of the '010 that are not covered by Shah.

25 Q. Okay. Let's look at those.

1 And so why did Defendant fail to meet their burden here?

2 A. Because there are several elements, in particular B, D,  
3 and H, that are not covered by Shah and wouldn't be rendered  
4 obvious by Shah. And as we said, in order to prove  
5 invalidity, you have to meet each and every element and each  
6 and every element of the claim language, and the Defendant  
7 failed to do that.

8 Q. Now, what was Doctor Jeffay's theory about a hub and how  
9 Shah met this element?

10 A. So Doctor Jeffay's general theory was any PE device could  
11 be a hub or, more specifically, he said any PE device is a  
12 hub.

13 Q. Now, do you agree that a PE device can be a hub?

14 A. I agree that a PE could be a hub, but not all PE devices  
15 are actually hubs, according to the language of the claims.

16 Q. And did you see yesterday Nokia's routers configured as a  
17 hub?

18 A. Yes, I did.

19 Q. Okay. And so what is the next part of your analysis on  
20 claim 1 of the '010 Patent?

21 A. So I went in and looked at the specific claim language,  
22 and what Doctor Jeffay was pointing to as edge devices and  
23 hubs had to meet each and every element of the claim. So I  
24 know yesterday you heard differences in the sides of what the  
25 devices were, but ultimately you have to look at the claim

1 language and make sure that each and every element of what's  
2 in the claim are met by the device that is being pointed to.

3 Q. Thank you.

4 And do you remember when Nokia said yesterday that if  
5 claim 1 is infringed, then claim 1 is invalid?

6 A. Yes, I did.

7 Q. And can you have it both ways, Doctor Cole?

8 A. In my opinion, you cannot.

9 Q. Okay. And why does that not make any sense?

10 A. Because when you're looking at a patent, either it's  
11 valid or it's invalid. Either there is prior art that shows  
12 that it's valid or there's prior art that shows that it's  
13 invalid, but in my experience it's not conditional.

14 So what they're saying here is that if it turns out claim  
15 1 is not infringed, then the patent's valid, but if it turns  
16 out that claim 1 is infringed, then all of the sudden it  
17 becomes invalid. So it's conditional based on certain  
18 outcomes that are decided in the case which, to me, is not how  
19 you do invalidity. Either it's valid or it's not. It's not  
20 conditional.

21 Q. And, Doctor Cole, did you also analyze claim 1A to the  
22 '010 Patent?

23 A. Yes, I did.

24 Q. And what was your finding on this?

25 A. That there is several key components that are missing

1 from the claim language. So Doctor Jeffay was pointing to one  
2 of the PE devices as the edge device. But if we go through  
3 and look, it has to map to two or more of the native  
4 interfaces.

5 Well, what Doctor Jeffay on the right-hand side is  
6 pointing to as an edge device, it only is one native  
7 interface. So if you look at PE device 1, that's only  
8 ethernet. That's only one. If you look at PE device 2,  
9 that's ATM. That's only one. If you look at PE device 3,  
10 frame relay, that's only one.

11 You can see the claim language says two or more. One is  
12 not two or more. So he failed to meet that.

13 Then he points to the green arrow as the interface to a  
14 respective VLAN. But, once again, the claim says that native  
15 interfaces are to different respective VLANs. So the native  
16 interface ethernet needs to be different than the VLAN, and  
17 clearly you can see he's pointing to the same one.

18 So there's multiple pieces of the claim language that are  
19 not being met by Doctor Jeffay's read of Shah.

20 Q. So, Doctor Cole, is it your opinion that Nokia has failed  
21 to meet its burden on the '010 Patent?

22 A. Yes, that is my opinion.

23 Q. Doctor Cole, did you also analyze claims 2 and 3 of the  
24 '010 Patent?

25 A. Yes, I did.



1 Q. And what was your conclusion?

2 A. That what Doctor Jeffay pointed to for why claims 2 and 3  
3 were invalid were all in claim 1 because these are dependent  
4 claims. So the same issues on why Doctor Jeffay said claims 2  
5 and 3 were invalid was exactly what I just covered previously.

6 So because I showed you that they were missing key  
7 elements and claim 1 is valid, that means that claim 2 and 3  
8 would also be valid for those same reasons.

9 Q. So what is your overall opinion on whether the '010  
10 Patent is valid or invalid?

11 A. The '010 Patent is valid over Shah.

12 Q. Thank you, Doctor Cole.

13 MR. LIDDLE: Pass the witness.

14 THE COURT: All right. Cross examination by the  
15 Defendant.

16 Mr. Frist, you may proceed.

17 MR. FRIST: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. FRIST:

20 Q. Doctor Cole, I want to touch on the nuance of Nokia's  
21 position regarding invalidity that you mentioned in your  
22 direct examination. Okay?

23 A. Yes.

24 Q. Do you understand that Nokia's position on invalidity is  
25 that the patent is invalid only if Nokia's found to infringe.

1 You understand that?

2 A. That is my understanding.

3 Q. And you said that was impossible based on your  
4 understanding of invalidity. Right?

5 A. I don't believe I used those words.

6 Q. You said there's no way for a patent not to be -- it's  
7 either valid or invalid, infringement plays no role. That's  
8 what you said. Right, Doctor Cole?

9 A. I said in my experience that a patent is valid or invalid  
10 independent and not conditional.

11 Q. All right. So you understand that when approaching  
12 invalidity and infringement, we have to use the same  
13 interpretation of the claims?

14 A. Well, you use the Court's claim construction or plain and  
15 ordinary meaning.

16 Q. But you have to use the same construction, the same plain  
17 and ordinary meaning, when you're reading the claims whether  
18 it's for infringement or invalidity. Right?

19 A. That is generally my understanding.

20 Q. Right. So if you have a feature that infringes the  
21 claims but that feature was well-known way before the patent,  
22 then the patent's invalid. Right?

23 A. Generally -- once again, I want to make sure there's no  
24 other specifics in there. Generally, that would be the bar  
25 that we use.

1 Q. Okay. I'd like to shift and talk about the combination  
2 of Aggarwal and RFC 4875 draft that you talked about. Do you  
3 recall that?

4 A. Yes, I do.

5 Q. All right. And you said a person of ordinary skill  
6 wouldn't combine those two documents. Right?

7 A. That's correct.

8 Q. You understand Aggarwal is one of the primary authors of  
9 RFC 4875 draft. Right?

10 A. Yes.

11 Q. And Aggarwal is the primary inventor on the Aggarwal  
12 patent. Right?

13 A. Yes. That was my point--he's the author of both.

14 Q. Right. And he wrote those within six months of each  
15 other, you said.

16 A. Correct.

17 Q. Right? And both of those documents relate to this P2MP  
18 that we've been discussing this week. Right?

19 A. Right. And he put them in separate documents. So if it  
20 was obvious, he would have known to be able to put them  
21 together and he didn't.

22 Q. Doctor Cole, Aggarwal is a patent. Right?

23 A. Yes.

24 Q. Mr. Aggarwal filed for patent protection because he had a  
25 good idea that he came up with and he wanted the protection of

1 the United States over that idea. Right?

2 MR. LIDDLE: Calls for speculation.

3 THE COURT: Sustained.

4 Q. (BY MR. FRIST) Doctor Aggarwal filed for a patent to  
5 protect his idea. Right?

6 MR. LIDDLE: Same objection.

7 THE COURT: I don't know that anybody ever files for  
8 a patent not to protect their invention, so I'll overrule that  
9 as not being something that calls for much speculation.

10 THE WITNESS: It was a draft. But, yes, generally  
11 that's why you would file for a patent.

12 Q. (BY MR. FRIST) Right. So Aggarwal got a patent, but  
13 then he also went and worked with the industry to share his  
14 ideas and make sure that industry standard included his ideas  
15 about P2MP. Right?

16 A. Once again, you're asking me to speculate on Aggarwal's  
17 intention, but an RFC is public.

18 Q. Right. And Mr. Aggarwal drafted the RFC 4875 draft and  
19 his patent, and they both cover the same subject matter, the  
20 P2MP. Right?

21 A. The same high-level technology.

22 Q. Right. And in the Aggarwal patent, he discusses some of  
23 the details of P2MP. Right?

24 A. I believe that is true.

25 Q. For example, he discusses path and RESV messages. Right?

1 A. I would ultimately refer back to what's in the patent,  
2 but I believe that is correct.

3 Q. Right. But Doctor Aggarwal does not provide the details  
4 of the format of the path and RESV messages in his patent.  
5 Right?

6 A. Generally, I think that's correct. I don't have both of  
7 them memorized but I believe at a high level that's -- that  
8 could be correct.

9 Q. The RFC 4875 draft includes all the details of the format  
10 of those messages. Right?

11 A. I'm always careful with the word 'all', but it does have  
12 some details for extensions for some of those messages.

13 MR. FRIST: Can I please use the elmo?

14 Q. (BY MR. FRIST) Doctor Cole, this is RFC 4875 draft. Do  
15 you see section 6.1 that's entitled RESV Message Format?

16 A. I do.

17 Q. Yeah. So RFC 4875 draft includes the message formats for  
18 RESV and a bunch of other messages. Right?

19 A. That is correct.

20 Q. Okay. So a person of ordinary skill reading Aggarwal who  
21 wanted to know how to implement path and RESV messages, they  
22 would look to the other work by Mr. Aggarwal that describes  
23 those same messages, wouldn't they?

24 A. You have to be a little careful because some of what's in  
25 Aggarwal's patents is different than what's in the RFC.

1 Q. With respect to the path and RESV messages, if a person  
2 of ordinary skill wanted to know the details of those  
3 messages, they would look to the RFC 4875 draft. Correct?

4 A. That would be correct.

5 Q. Now, I'd like to talk a little more about your opinions  
6 about the '580 Patent and validity. Okay?

7 A. Yes.

8 Q. Now, you understand that it's Nokia's position for  
9 infringement that it implements the RFC 4875. Right?

10 MR. LIDDLE: Objection, Your Honor. Outside the  
11 scope.

12 THE COURT: Overruled.

13 THE WITNESS: Could you repeat the question?

14 Q. (BY MR. FRIST) You understand that Nokia says it  
15 implements RFC 4875. Right?

16 A. I would have to go back and check. I think those are  
17 areas that are more covered by Doctor Valerdi, but I'd have to  
18 go back and check that.

19 Q. Okay. You understand that Nokia says that RFC 4875  
20 doesn't allow sharing of resources between tunnels. You  
21 understand that. Right?

22 A. If there's specific evidence you'd like to show me on  
23 that, but I don't know -- I remember exactly the details of  
24 all the documents.

25 Q. You've sat through this whole week of trial. Right,

1 Doctor Cole?

2 A. Yes, and I would emphasize I sat through the whole week  
3 of trial in which a lot of information was presented.

4 Q. Right. And you know the key issue for the '580 Patent is  
5 whether RFC 4875 allows sharing of resources between tunnels.  
6 Right?

7 MR. LIDDLE: Objection, Your Honor. Outside the  
8 scope. Talking about infringement, not validity.

9 THE COURT: I'll overrule the objection.

10 THE WITNESS: Generally. But it's been a long week  
11 and you're starting to ask me very specific questions about  
12 documents. So I would just ask for that document if you want  
13 me to quote what's specifically within a document.

14 Q. (BY MR. FRIST) Doctor Cole, I was asking about Nokia's  
15 contentions in this case. Were you paying attention to  
16 Nokia's contentions during the course of this week?

17 A. Yes, I was.

18 Q. Okay. And you understand that Nokia's contention is that  
19 RFC 4875 doesn't allow sharing of resources between tunnels.  
20 Right?

21 A. Generally I believe that's correct. Like I said, it's  
22 been a long week, so I want to be careful of what I say under  
23 oath.

24 Q. For your invalidity analysis, you looked at this RFC 4875  
25 draft. Right?

1 A. That is correct.

2 Q. Okay. And you understand that it's Nokia's position that  
3 there's no difference between the relevant parts of that RFC  
4 draft and the final RFC document. Right?

5 A. I believe that was the testimony of Doctor Jeffay.

6 Q. And, Doctor Cole, as of your deposition in this case, you  
7 were not aware of any differences between RFC 4875 as it  
8 published in its final form and this RFC draft that you looked  
9 at for invalidity. Correct?

10 A. Generally that is correct.

11 Q. Okay. Now, despite the importance of the similarities of  
12 RFC draft and this final RFC document, the focus of your  
13 testimony on direct was on Aggarwal. Correct?

14 A. I believe I covered both of those. It was to rebut  
15 Doctor Jeffay's opinions.

16 Q. You recall Doctor Jeffay focused in his direct  
17 examination for invalidity on the RFC 4875 draft and his walk  
18 through the elements. Right?

19 A. I believe he covered both.

20 Q. Okay. Let's talk about the details of the RFC 4875  
21 draft. Okay?

22 A. Sure.

23 Q. You understand that the RFC 4875 draft describes setting  
24 up P2MP LSPs. Right?

25 A. That is generally my understanding.



1 MR. FRIST: Mr. Carrillo, can we please bring up DX  
2 35 and go to page 8?

3 Q. (BY MR. FRIST) Doctor Cole, do you see section 4.4 where  
4 it says a P2MP LSP is constituted of one or more S2L sub-LSPs?

5 A. Yes, I do.

6 Q. So you agree the RFC draft discloses a P2MP LSP includes  
7 one or maybe many of these S2L sub-LSPs. Right?

8 A. You changed the language a little, but I believe that's  
9 still aligned with what's in the RFC.

10 Q. Okay.

11 MR. FRIST: Mr. Carrillo, can you please go to page  
12 12 through 13 and to section 5.2 at the bottom? Kind of going  
13 across to the next page, please. Thank you.

14 Q. (BY MR. FRIST) Do you see the sentence that begins,  
15 "another S2L sub-LSP"? It's starting kind of around there.  
16 Do you see it says, "Another S2L sub-LSP belonging to the same  
17 instance of this S2L sub-LSP (i.e., the same P2MP LSP) shares  
18 resources with this S2L sub-LSP." Do you see that?

19 A. I do.

20 Q. You understand that S2L sub-LSPs of the same P2MP LSP can  
21 share resources. Right?

22 A. That's what the RFC says.

23 Q. All right. So we got two facts. First fact is that a  
24 P2MP LSP includes multiple S2L sub-LSPs, and those sub-LSPs  
25 can share resources. Right?

1 A. That is correct.

2 Q. Now, you understand that Doctor Jeffay's infringement  
3 opinion in this case is that the S2L sub-LSPs in Nokia's  
4 products are separate tunnels. Right?

5 MR. LIDDLE: Objection, Your Honor. He's asking  
6 about Doctor Valerdi's infringement opinions. Outside the  
7 scope.

8 MR. FRIST: Your Honor, if I may?

9 THE COURT: What's your response?

10 MR. FRIST: He mentioned Doctor Valerdi's  
11 infringement opinion in his direct examination as he  
12 considered -- considered invalidity.

13 THE COURT: Well, I'll allow this question, but we  
14 need to focus on this witness' opinions regarding validity and  
15 invalidity.

16 MR. FRIST: That's my intention with the next  
17 question, Your Honor.

18 THE COURT: All right. Then let's have the next  
19 question and then move on.

20 MR. FRIST: Can I ask that same question and then  
21 the next one, Your Honor, just to make sure?

22 THE COURT: Restate your question.

23 MR. FRIST: Thank you, Your Honor.

24 Q. (BY MR. FRIST) You understand, Doctor Cole, that it's  
25 Doctor Valerdi's opinion for infringement that the S2L

1 sub-LSPs in Nokia products are separate tunnels even though  
2 they're part of the same P2MP LSP?

3 A. I know Doctor Valerdi talks about two tunnels, but for  
4 questions on infringement you would have to ask Doctor  
5 Valerdi. I didn't form opinions on infringement.

6 Q. Let me ask you your opinion, Doctor Cole. It's your  
7 opinion that S2L sub-LSPs of the same P2MP LSP are not  
8 separate tunnels. Correct?

9 A. For what Doctor Jeffay pointed to in his direct  
10 yesterday, I believe those are referring to the same tunnel  
11 and there's no resource sharing or resource manager. So he  
12 failed to meet the obligations of invalidity.

13 MR. FRIST: I'm going to object as non-responsive,  
14 Your Honor.

15 THE COURT: Overruled.

16 Q. (BY MR. FRIST) Doctor Cole, I want to focus on what you  
17 understand the RFC 4875 draft to disclose. Okay?

18 A. Okay.

19 Q. You understand, as we've discussed, that RFC 4875 draft  
20 discloses multiple S2L sub-LSPs that are part of this same  
21 P2MP LSP. Right?

22 A. I believe we just looked at that. That's one of the  
23 pieces. The RFC is a pretty -- pretty thick document, but  
24 that is one thing that's covered.

25 Q. And we already discussed that S2Ls of the same P2MP can

1 share resources. Right?

2 A. That is also correct.

3 Q. It's your opinion, sir, that the RFC 4875 draft disclosed  
4 multiple paths within the same tunnel but not multiple tunnels  
5 as contemplated within the '580 Patent. Correct?

6 A. It's a little different. My opinion is there's no  
7 resource manager across multiple tunnels and that there are  
8 not multiple tunnels within that RFC.

9 Q. Doctor Cole, do you have your rebuttal expert report up  
10 there?

11 A. I do not believe so.

12 MR. FRIST: Your Honor, may I go grab some binders?

13 THE COURT: You may.

14 MR. FRIST: Thank you.

15 May I approach, Your Honor?

16 THE COURT: You may.

17 MR. FRIST: Thank you. May I proceed, Your Honor?

18 THE COURT: Yes.

19 Q. (By MR. FRIST) Doctor Cole, if you can please turn in  
20 your rebuttal report to paragraph 266. I want you to look at  
21 the last sentence in that paragraph.

22 A. Last sentence in paragraph 266?

23 Q. Yes.

24 A. Okay.

25 Q. And, Doctor Cole, does that paragraph refresh your

1 recollection as to whether it's your opinion that the RFC 4875  
2 internet draft discloses multiple paths within the same tunnel  
3 but not multiple tunnels as contemplated within the '580  
4 Patent?

5 A. Yes, that does. Thank you.

6 Q. Okay. So you agree with me then. Right? That's your  
7 opinion.

8 A. Yes, it is.

9 Q. Okay. Now, you provided that opinion with full knowledge  
10 that RFC 4875 describes that multiple S2L sub-LSPs can be part  
11 of the same P2MP LSP. Right?

12 A. I gave that opinion in reading and going through the  
13 whole RFC.

14 Q. Okay. And you understand that there's resource sharing  
15 disclosed in RFC 4875 draft between those S2L sub-LSPs.  
16 Right?

17 A. Yes, there is.

18 Q. So even though there's resource sharing between S2L  
19 sub-LSPs within the same P2MP LSP, it's your opinion that that  
20 resource sharing doesn't satisfy the claims of the '580  
21 Patent. Right?

22 A. That is correct.

23 Q. Okay. And the reason that you don't believe it's  
24 sharing -- resource sharing between tunnels is because there's  
25 only a single P2MP LSP. Correct?

1 A. That is correct.

2 Q. And the sub-LSPs, these S2L sub-LSPs, in your opinion,  
3 that are within one P2MP LSP, are not separate tunnels.

4 A. It's -- I just want to make sure we get the language  
5 correct. It's multiple paths within the same tunnel. You're  
6 meaning multiple tunnels within tunnels, but my opinion is  
7 multiple paths within the same tunnel is not multiple tunnels.

8 Q. Right. It's your opinion that a sub-LSP is a path of a  
9 tunnel, not a separate tunnel. Correct?

10 A. That is correct.

11 Q. Okay. And it's your opinion that these S2L LSPs that are  
12 paths of a tunnel are combined to make up a single tunnel  
13 that's the P2MP LSP. Right?

14 A. In the context of rebutting Doctor Jeffay's opinion of  
15 what he presented, that would be correct.

16 Q. I'm asking in the context of the RFC 4875 draft. It's  
17 your opinion that because the S2L sub-LSPs are paths of a  
18 single P2MP LSP, that they are part of the same tunnel.  
19 Correct?

20 A. Once again, in the context of Doctor Jeffay's opinion,  
21 that would be correct.

22 Q. Doctor Cole, you understand that in building a P2MP LSP,  
23 S2L LSPs, these paths, are merged together. Right?

24 A. Generally that's correct.

25 Q. Right. So in building a P2MP LSP, the standard described

1 in RFC 4875 discloses merging S2L sub-LSPs. Right?

2 A. I believe that's also correct.

3 Q. And it's your opinion, Doctor Cole, that the '580 Patent  
4 is directed to separate tunnels within a network that share  
5 resources as opposed to separate tunnels that merge into a  
6 single tunnel. That's correct. Right?

7 A. I wouldn't agree with that. You're mixing the words  
8 paths and tunnels.

9 Q. Can you please go to paragraph 269 of your rebuttal  
10 report in front of you? Let me know when you're there, Doctor  
11 Cole.

12 A. I'm there.

13 Q. Doctor Cole, after reading paragraph 269, does that  
14 refresh your recollection as to whether it's your opinion in  
15 this case that the '580 Patent is directed to separate tunnels  
16 within a network that share resources as opposed to separate  
17 tunnels that merge into a single tunnel?

18 A. Yes, that does. Thank you.

19 Q. All right. So you agree that's your opinion in this  
20 case. Right, Doctor Cole?

21 A. Yes, I do.

22 MR. FRIST: I'll pass the witness, Your Honor.

23 THE COURT: Is there redirect?

24 MR. LIDDLE: Nothing further, Your Honor.

25 THE COURT: All right. You may step down, Doctor

1 Cole.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 Plaintiff, call your next rebuttal witness.

5 MR. BENNETT: Plaintiff calls Dr. Ricardo Valerdi.

6 THE COURT: All right. Doctor Valerdi, if you'll  
7 come forward and return to the witness stand, sir. And I'll  
8 remind you, sir, you remain under oath.

9 Mr. Bennett, you may proceed with direct.

10 MR. BENNETT: Thank you, Your Honor.

11 RICARDO VALERDI, Ph.D.,  
12 having been previously sworn, testified further under oath as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. BENNETT:

16 Q. Good afternoon, Doctor Valerdi.

17 A. Good afternoon.

18 Q. As we get started, maybe let's start with this question.  
19 What are you here not to testify about?

20 A. I will not be going through all the infringement opinions  
21 that I covered the other day.

22 Q. Okay. What are you here to testify about?

23 A. I'm here to respond to some of the testimony given by  
24 Doctor Jeffay and Doctor Chatterjee.

25 Q. Okay. Let's start with the latter that you just



1 mentioned since he was here today, Doctor Chatterjee.

2 You heard him testify -- you were in the courtroom when  
3 he testified that Nokia's infringement of the '599 was  
4 impossible. Did you hear that?

5 A. Yes.

6 Q. All right. Having heard that testimony, are you able to  
7 make what Doctor Chatterjee declared impossible possible?

8 A. Yes.

9 Q. Okay. Explain how.

10 A. Well, he made -- gave some opinions about the visibility  
11 between layer 2 networks and layer 3 networks not being  
12 possible, and he also made some comments about certain  
13 connections between certain network elements not being  
14 possible.

15 But I think the evidence that I reviewed suggests  
16 otherwise, figures and source code. I believe that the things  
17 he said are impossible are actually quite possible.

18 Q. Okay. Let's look at one of those figures.

19 MR. BENNETT: Mr. Jarrett, Joint Exhibit 46a, page  
20 41, please. I'll just use the overhead. Can you switch me  
21 over, please?

22 Q. (BY MR. BENNETT) Is this one of the figures you  
23 mentioned, Doctor Valerdi, that -- in your discussion of the  
24 '599?

25 A. Yes.

1 Q. Okay. Doctor Chatterjee discussed this earlier today as  
2 well. And what was it that you heard with which you  
3 disagreed?

4 A. One of the things that Doctor Chatterjee said is that  
5 there is only one egress node or -- in terms of what this  
6 diagram shows, one broadband service router.

7 Q. Okay. Can you indicate on the screen there where the  
8 broadband service router is in case we've forgotten?

9 A. Yes.

10 Q. Okay. What is it that Doctor Chatterjee got wrong about  
11 this figure?

12 A. His statement was that there was only one BSR. But as  
13 you can see from the network elements that he has are circled,  
14 there are two network elements there. And to further confirm  
15 that there are two network elements, you'll see that there are  
16 two connections coming in from each of the corresponding BSAs.  
17 So that just summarizes that he didn't describe the diagram  
18 correctly.

19 Q. Okay. And, more importantly, why does his incorrect  
20 description of the diagram not disprove your infringement  
21 opinion?

22 A. Because what I described is that there are egress nodes,  
23 nodes being plural, there is more than one node, meaning that  
24 there is more than one broadband service router that is  
25 possible to connect the layer 2 network on the left with the

1 layer 3 network on the right.

2 Q. Okay. We also discussed the following page of joint  
3 Exhibit 46a where we had this discussion of the advantages of  
4 using VPLS. Do you remember that?

5 A. Yes.

6 Q. All right. Did you hear anything this morning from  
7 Doctor Chatterjee that he also got wrong there?

8 A. Yes. Doctor Chatterjee also said that the Nokia products  
9 cannot be configured as a layer 2 network.

10 Q. Can it be configured as a layer 2 network despite what he  
11 said?

12 A. Yes.

13 Q. And how do you know that?

14 A. Well, as you can see, this is Nokia's triple play service  
15 delivery architecture document, and they explicitly mention  
16 VPLS, which stands for virtual private LAN service, which by  
17 definition a private LAN is a layer 2 network.

18 Q. Okay. Now, we're not going back through all the claim  
19 analysis, but how does -- how do these two documents, the  
20 figure and the commentary, reinforce what you said about the  
21 claim language of the '599 Patent?

22 A. What I said about the infringement of Nokia's product  
23 relative to that claim language is there are multiple egress  
24 nodes, we saw there are multiple BSRs, and that this is a  
25 layer 2 network because it supports virtual private LAN

1 service, which is by definition a layer 2 protocol.

2 Q. And if all those facts that you just mentioned are  
3 present, what does that mean for the claim in the '599 Patent?

4 A. That Nokia's products infringe.

5 Q. All right. There was some discussion also of the OSPF.  
6 You heard Doctor Chatterjee speak about that. Correct?

7 A. Yes.

8 Q. All right. What is it that he said about is OSPF that  
9 you found incorrect?

10 A. Doctor Chatterjee said that the OSPF algorithm is a layer  
11 3 protocol.

12 Q. And why was that wrong?

13 A. Because OSPF is an algorithm that processes information  
14 from a layer 2 packet. It sits on top of layer 2, so it  
15 actually is very relevant for layer 2, even though it might be  
16 described as a layer 3 algorithm.

17 Q. Okay. Why is it very relevant, the distinction  
18 between -- the idea of where it sits between layers 2 and 3?

19 A. Because in the patent, the selection of the routes and  
20 the decisions that are made with the various metrics and  
21 addresses have to occur in the layer 2 network.

22 Q. And do Nokia's products support ethernet ring networks?

23 A. Yes.

24 Q. And how do you know that?

25 A. Because ethernet is a layer 2 protocol and we've shown

1 that the diagram of Nokia's product supports layer 2  
2 protocols. And we also know that the ring topology is  
3 referenced and pointed to, both graphically and in the text of  
4 Nokia's technical documentation.

5 Q. And so tying that back to the claims, the claim terms  
6 of -- of the patent, what does what you just described, what  
7 does that -- how does that impact your infringement analysis?

8 A. It doesn't change my opinion, and it supports the fact  
9 that Nokia's -- that I believe Nokia's products infringe that  
10 patent.

11 Q. Is there anything else you needed to respond to from  
12 Doctor Chatterjee's discussion this morning of the '599 Patent  
13 that you wish to respond to as it impacts infringement?

14 A. I just wanted to point out that he showed a lot of  
15 technical documentation, but he didn't show any source code to  
16 support his opinions. And I think that's critical to remember  
17 because the source code literally describes how the product  
18 operates. And I think that's an important thing to consider.

19 Q. And, in fact, within the context of the '599 Patent and  
20 its preamble, why does source code matter so much?

21 A. Because it's essentially a computer, a network element  
22 that's built to process information in the context of the  
23 computer network, and that processing is performed by the  
24 source code.

25 Q. And you heard Nokia's counsel ask Doctor Chatterjee about

1 customer use. Do you remember that?

2 A. Yes.

3 Q. Given the context of the claims in -- the claim we're  
4 looking at in the '599 Patent, does use matter?

5 A. Well, if the routers are designed to do a certain  
6 function, that to me is use. Regardless of whether it's a  
7 hundred percent of the time or one percent of the time, it's  
8 available for somebody to use.

9 Q. Any final thoughts as to what Doctor Chatterjee said as  
10 applied to the '599 Patent?

11 A. No.

12 Q. Okay. Let's move on to the '010 Patent, which was Doctor  
13 Jeffay from yesterday. Okay?

14 There's a lot of discussion about the hub. Do you  
15 remember that?

16 A. Yes.

17 Q. All right. What distinguishes your testimony about a hub  
18 from Doctor Jeffay's testimony about the hub?

19 A. There are two main things that are different. One of  
20 them is that Doctor Jeffay's definition of a hub doesn't  
21 consider the claim language of that patent of what that hub is  
22 supposed to do.

23 Q. In what way?

24 A. If we think about what the claim language says is the  
25 hub's supposed to have certain capabilities like to process

1 information in a network, that's the intent of what the hub is  
2 supposed to do in light of that claim language. And Doctor  
3 Jeffay did not interpret hub in that light.

4 Q. That brings up a point which is this: Could you make  
5 sense of Doctor Jeffay's testimony about hubs as being dumb  
6 devices at layer 1 but also being a layer 3 device?

7 A. That was a little bit confusing for me because when -- in  
8 one part of his testimony, Doctor Jeffay said that a hub is a  
9 layer 1 is dumb device, and in another part of his testimony  
10 he said, well, it could be a layer 3 device. That's two  
11 different answers to the question. In fact, when the Judge  
12 asked him what a Tar Heel was, he also gave two answers to  
13 that question.

14 Q. Going back to hubs at layer 1 and layer 3, he talked  
15 about the node -- or we talked about routers as hubs, and he  
16 dismissed that. You heard his testimony?

17 A. Yes.

18 Q. What in your view did he get wrong about routers as hubs?

19 A. Doctor Jeffay didn't consider that routers can operate as  
20 routers and hubs, and that was actually the intent of the use  
21 of the term 'hub' in the claim language of that patent.

22 Q. And which claim language are you referring to when you  
23 said as to this issue of hub?

24 A. The -- I believe it was in claim 1 and others in the '010  
25 Patent.

1 Q. So let's --

2 MR. BENNETT: Mr. Jarrett, maybe we can get ID No.  
3 2176. That's it.

4 Q. (BY MR. BENNETT) So coming back to the claim language  
5 versus what Doctor Jeffay testified to and hubs, what is it  
6 based on what we're seeing here that -- that Doctor Jeffay got  
7 wrong?

8 A. Well, I think what Doctor Jeffay was suggesting is that  
9 the use of the term 'hub' in element B here shown on the  
10 screen -- at the top of the screen, which is a hub, he didn't  
11 consider the text that comes immediately after that comma,  
12 that the inventor wrote that the hub has to comprise of these  
13 things such as ports, such as the ability to receive and  
14 transmit data frames, the ability to operate in layer 2  
15 communication protocol.

16 Those are the things that matter when you're interpreting  
17 the term 'hub' in the context of this specific claim of this  
18 specific patent.

19 Q. Okay. And that specific claim language that you just  
20 pointed out, how does it apply to, say, a 7750 service router?

21 A. When you consider what the functionalities are of a 7750  
22 service router, it performs precisely these things described  
23 in element B of claim 1 of the '010 Patent.

24 Q. Does it have a -- does it comprise a plurality of ports?

25 A. Yes.



1 Q. Can it be configured to receive and transmit data frames?

2 A. Yes.

3 Q. And can it be -- can it receive and transmit data frames  
4 in accordance with a packet-oriented level [sic] 2 protocol?

5 A. Layer 2, yes.

6 Q. Sorry. Layer 2 protocol.

7 What else about what Doctor Jeffay said about a hub  
8 comprising a plurality of ports for purposes of claim 1 did  
9 you disagree with?

10 A. What I also disagreed with is that there was confusion  
11 about the topology of hub-and-spoke and the role -- compared  
12 to the role of the hub in the context of this claim language.  
13 What I noticed and is important to point out is that the  
14 topology is not mentioned in this claim.

15 Q. Explain why is that significant for purposes of  
16 infringement.

17 A. It means what the inventor was intending is for a  
18 broader, more versatile application of the term 'hub', so it's  
19 not constrained to a certain network topology.

20 Q. And how did Doctor Jeffay get that particular piece wrong  
21 when he testified yesterday?

22 A. He suggested that the hub can only exist in a  
23 hub-and-spoke topology.

24 Q. And --

25 MR. HAYNES: Objection, Your Honor; lacks

1 foundation. He's characterizing the witness' testimony  
2 incorrectly, I believe. And if he's going to do that, I think  
3 he ought to at least show him the testimony we're talking  
4 about.

5 THE COURT: He's entitled to testify as to how he  
6 understood the witness' testimony, and you can certainly cross  
7 examine him on that. I'm going to overrule the objection.

8 MR. HAYNES: Thank you.

9 Q. (BY MR. BENNETT) You may answer.

10 A. The way that I understood what Doctor Jeffay was  
11 suggesting is that the application of the term 'hub' in this  
12 case was more about the topology of the network and not what  
13 function it was performing in light of the claim language.

14 Q. But what is the reality of the claim language?

15 A. The reality is that a hub is supposed to do the things  
16 that are described after the comma that's written here in  
17 claim element B of claim 1.

18 Q. And do Nokia's products satisfy those elements of that  
19 claim?

20 A. Yes.

21 Q. Let's go now to the '580.

22 MR. BENNETT: Your Honor, at this time I will need  
23 to seal the courtroom because we're going to get -- or I will  
24 ask that we seal the courtroom because we are going to need to  
25 look at some source code.

1           THE COURT: All right. Based on counsel's request  
2 and to protect confidential information, I'll order the  
3 courtroom sealed at this time. This will also seal this  
4 portion of the record.

5           All persons present who are not subject to the protective  
6 order should exit the courtroom and remain outside until it's  
7 reopened and unsealed.

8                               (Courtroom sealed.)

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(Courtroom unsealed.)

THE COURT: All right, Mr. Bennett. The courtroom is unsealed. You may continue.

MR. BENNETT: Thank you, Your Honor.

Q. (BY MR. BENNETT) Doctor Valerdi, I guess I'll end with one last question. Is there anything that you heard from Nokia's two separate experts that, in your view, did anything to diminish your infringement opinions?

A. No.

MR. BENNETT: I'll pass.

THE COURT: All right. Cross examination by the Defendant.

Proceed when you're ready, Mr. Haynes.

MR. HAYNES: Thank you, Your Honor.

Before I get started, Doctor Valerdi, do you have a copy of your expert reports in front of you already or do I need to get you one of those?

THE WITNESS: I don't have anything.

MR. HAYNES: Let me get that passed out before we get started here.

Your Honor, do you have a copy from before? Would you

1 like a new one as well?

2 THE COURT: I do.

3 MR. HAYNES: May I proceed, Your Honor?

4 THE COURT: You may proceed.

5 CROSS EXAMINATION

6 BY MR. HAYNES:

7 Q. Doctor Chatterjee -- Chatterjee. Excuse me.

8 A. It's okay.

9 Q. Still stuck in this morning.

10 Doctor Valerdi, you just gave a lot of testimony  
11 regarding what you understood that Doctor Jeffay and Doctor  
12 Chatterjee had testified about in this case. Right?

13 A. Correct.

14 Q. And you weren't actually shown their actual testimony.  
15 You were just asked to try to draw from your memory and  
16 recount as best as you could remember what they actually said.  
17 Right?

18 A. That was based on my recollection sitting here for the  
19 past few days.

20 Q. Now, you wouldn't intentionally mischaracterize something  
21 that they said in your testimony, would you?

22 A. No, I would not.

23 Q. Now, there were a few points, and I'm going to try to  
24 track them, you probably saw me trying to track these as you  
25 were going through them, but I believe one of the points you

1 made was that Doctor Chatterjee said that OSPF is not a -- or  
2 is a layer 3 protocol, and you disagree with that. Right?

3 A. I disagreed with it only being a layer 3 protocol.

4 Q. But you testified here two days ago. Right?

5 A. Yes.

6 Q. And do you recall that I asked you that exact same  
7 question, that is OSPF a layer 3 protocol? Do you recall  
8 that?

9 A. Yes.

10 Q. Do you recall that the answer you gave was yes?

11 A. Yes, it's still -- yes.

12 Q. And that's exactly what Doctor Chatterjee said, isn't it?

13 A. Yes. But you didn't ask me about layer 2 so I only  
14 responded to what you asked me.

15 Q. Didn't he ask you whether or not you thought Doctor  
16 Chatterjee was wrong when he said that?

17 A. Yes.

18 Q. And you said he was. Right?

19 A. I still think so.

20 Q. Even though you used the exact same words yourself two  
21 days ago.

22 A. I'm not sure I only limited it to layer 3. If I recall,  
23 when you asked me the OSPF question, there was a follow-up  
24 question related to layer 2, and I think I said I wasn't sure  
25 when you asked me on Tuesday. So it's not apples-to-apples

1 here. He was only asked about layer 3 or he only provided  
2 opinion about layer 3. I was asked about layer 3 and layer 2.

3 MR. HAYNES: Can we bring up -- I'm sorry. Can we  
4 display for --

5 Q. (BY MR. HAYNES) Well, actually let me just show you your  
6 testimony from two days ago.

7 MR. HAYNES: If we can bring up the trial transcript  
8 at 562, line 6 to 11.

9 MR. BENNETT: I object until we have an inconsistent  
10 statement or proof of one. We probably -- yeah, I object to  
11 the --

12 THE COURT: He hasn't testified that he doesn't  
13 recall. This is not for refreshment. If he testifies  
14 inconsistently today with what he did earlier, then you  
15 perhaps can impeach him with his prior testimony.

16 Q. (BY MR. HAYNES) Doctor Valerdi, do you agree that OSPF  
17 is a layer 3 protocol?

18 A. Yes.

19 Q. The testimony that you criticized from Doctor Chatterjee  
20 was Doctor Chatterjee said OSPF was a layer 3 protocol.  
21 Correct?

22 A. He testified it was only a layer 3 protocol. Correct.

23 Q. Now, you also criticized Doctor Chatterjee because you  
24 said that he represented to the jury or testified that in the  
25 triple play architecture there was only one BSR. Do you

1 recall that testimony?

2 A. Yes.

3 MR. HAYNES: Can we bring up JX 48a? Sorry. 46a.

4 Apologies.

5 Q. (BY MR. HAYNES) Doctor Valerdi, you recognize this  
6 document. Right?

7 A. Yes.

8 MR. HAYNES: And if we can go to page 41.

9 Q. (BY MR. HAYNES) And this was the document that Doctor  
10 Chatterjee testified about at length today?

11 A. Yes.

12 Q. And you see this document actually shows two BSRs.  
13 Right?

14 A. Yes.

15 Q. Do you recall that Doctor Chatterjee also created his own  
16 simplified illustration of this figure?

17 A. Yes. I remember a version of this being shown.

18 MR. HAYNES: May I have the elmo, please?

19 Q. (BY MR. HAYNES) How many BSRs are shown in that figure,  
20 sir?

21 A. There are two in that one.

22 Q. Now, you also -- I believe you also testified that Doctor  
23 Chatterjee said that in triple play, there could be no layer 2  
24 network. Do you recall giving that testimony today?

25 A. Yes.



1 Q. Do you see the title, Object Figure from Doctor  
2 Chatterjee's Diagram?

3 A. Yes.

4 Q. Can you read it?

5 A. Nokia's triple play services delivery architecture.

6 Q. And right below that, it says layer 2 mesh network.  
7 Correct?

8 A. Correct.

9 Q. So you agree with me that Doctor Chatterjee did not say  
10 that Nokia's triple play architecture could not be a layer 2  
11 network. Right?

12 A. That's not what I remember because when he was referring  
13 to the previous version of the diagram, the one that shows the  
14 ring network, he testified that that was not a layer 2  
15 network.

16 Q. Sir, you see the title of this is Layer 2 Mesh Network?

17 A. I do.

18 Q. And a layer 2 mesh network is a layer 2 network. Right?

19 A. Yes. I'm just repeating what I remember him testifying  
20 this morning in relation to the other diagram.

21 Q. Do you think that maybe what Doctor Chatterjee actually  
22 said is that there was no layer 2 ring network?

23 A. Yes, that's right. That's what he said.

24 Q. That is what he said.

25 A. Yes.

1 Q. Okay. I'm glad we can agree.

2 Okay. You've given a lot of testimony about how you  
3 looked at source code. Is that --

4 A. That's correct.

5 Q. You also looked at Nokia's technical documents. Right?

6 A. That's correct.

7 Q. You would agree with me that Nokia's technical documents  
8 are accurate with respect to the functionalities that you've  
9 accused of infringement here, wouldn't you, sir?

10 A. Yes.

11 Q. And you yourself rely on those same documents. Correct?

12 A. I do.

13 Q. Okay. Now, I believe with respect to the '010 Patent you  
14 also offered some criticisms of Doctor Jeffay. Do you recall  
15 that?

16 A. Yes.

17 Q. And you certainly wouldn't have attempted intentionally  
18 to mischaracterize Doctor Jeffay's testimony. Right?

19 A. That's correct.

20 Q. And one of the things you said is that Doctor Jeffay said  
21 that a hub is a layer 3 device. Do you recall that?

22 A. That's correct.

23 Q. But you know, don't you, that what Doctor Jeffay actually  
24 said was that a hub operates at layer 1 and does not operate  
25 at layer 2 or 3? Correct?

1 A. He also said that.

2 Q. You understand that Doctor Jeffay's opinion in this case  
3 is that the hub operates at layer 1?

4 A. That's one of his opinions, yes.

5 Q. Okay. And you understand that he testified that that hub  
6 does not have layer 2 and layer 3 functionality. Correct?

7 A. That's where it was a bit fuzzy because he did say layer  
8 3 in the context of a hub when he was answering questions in  
9 his cross examination.

10 Q. Would you like me to refresh your memory as to what  
11 Doctor Jeffay actually said about layer 2 and layer 3  
12 functionality?

13 A. Sure.

14 MR. HAYNES: If we can bring up the trial transcript  
15 at page 774, lines 21 through 23?

16 THE COURT: Yes, Mr. Bennett?

17 MR. BENNETT: It's improper refreshment. He can  
18 hand the witness the transcript and let him refresh, but it  
19 usually doesn't warrant publication.

20 THE COURT: I agree with that.

21 MR. HAYNES: Is it possible for me to display that  
22 to him directly, Your Honor? I have a hard copy. I can go  
23 pull it out if we need to do that, but --

24 THE COURT: I don't think we can put it on just one  
25 monitor. I think if it goes on the monitor, it goes on all

1 the monitors. If you've got a hard copy, let's hand that up.

2 Do you want to direct him where to review?

3 Q. (BY MR. HAYNES) If you'll go to page 774.

4 A. I'm there.

5 Q. At line 21 to 23.

6 A. Okay. I see that.

7 Q. Does that refresh your memory as to whether or not Doctor  
8 Jeffay testified that a hub does not have layer 2 or layer 3  
9 functionality?

10 A. This is one of the times he was asked about layer 2 or 3,  
11 but I know he was -- he responded in different -- in the  
12 context of different questions. So I might want to look at  
13 this a little bit further to find the part that I was  
14 remembering him talking about layer 3 context.

15 THE COURT: We're not going to review the entire  
16 transcript of his testimony. If your answer is this is one  
17 time, I recall other times that may or may not be consistent,  
18 then that's your answer. But there's no way we can go down  
19 this path too much further.

20 Q. (BY MR. HAYNES) Can you answer the question, sir?

21 A. Thank you. To clarify, I do see the lines and the page  
22 that you pointed out, but I do recollect him speaking about  
23 hubs in the context of layer 3 in other instances during his  
24 testimony.

25 Q. Okay. You agree that Doctor Jeffay told this jury at

1 least once with what you just read that a hub doesn't have  
2 layer 2 or layer 3 functionality. Right?

3 MR. BENNETT: Objection, asked and answered.

4 THE COURT: I'll allow it.

5 THE WITNESS: I do remember that.

6 Q. (BY MR. HAYNES) Now, you also testified that you thought  
7 Doctor Jeffay focused on hub-and-spoke topology as opposed to  
8 hub devices. Do you recall that testimony this afternoon?

9 A. That's correct.

10 Q. And is it your testimony today that you understood Doctor  
11 Jeffay to be saying that the hub of the claims referred to a  
12 hub-and-spoke topology?

13 A. No.

14 Q. You know that Doctor Jeffay, when he was talking about a  
15 hub, was talking about a hub device. Right?

16 A. Yes.

17 Q. Okay. And you know that it's Doctor Jeffay's opinion  
18 that if I have a network device that is configured in a  
19 hub-and-spoke topology, that device doesn't magically become a  
20 hub just because it's in that topology. Right?

21 A. He did say something of that effect.

22 Q. And you, sir, agree with me that when the patent refers  
23 to hub, that hub is a hub network device. Right?

24 A. My understanding is that it performs the functions that  
25 are described in that claim patent. There were at least three

1 things in that claim element.

2 MR. HAYNES: Move to strike as non-responsive, Your  
3 Honor.

4 THE COURT: Overruled. I think he's attempting to  
5 respond to your question.

6 Q. (BY MR. HAYNES) I understand that there are other  
7 limitations in the claim as to what the hub must do, but you  
8 would agree with me that the functions are functions, but the  
9 hub is referring to a device. Right?

10 A. I agree that functions and device are both important in  
11 interpreting what is meant here, yes.

12 Q. Fair enough.

13 And when it references a hub, it is referring to a hub  
14 network device. Correct?

15 A. Partially correct. It's hub device that is comprised of  
16 certain functionality.

17 Q. Fair enough.

18 Were you here when Doctor Cole testified?

19 A. Both times.

20 Q. And you heard Doctor Cole just a few minutes ago testify  
21 about point-to-multipoint LSPs?

22 A. Yes.

23 Q. And did you hear Doctor Cole testify that a  
24 point-to-multipoint LSP was one tunnel, not two tunnels?

25 A. Yes.

1 Q. And you agree with him that a point-to-multipoint LSP is  
2 one tunnel, not two tunnels. Correct?

3 A. In the context of responding to the technical standard, I  
4 believe that's how he was answering the question.

5 Q. Sorry. I wasn't talking about Doctor Cole anymore. I'm  
6 talking about your testimony.

7 A. Okay. I apologize. Re-ask the question, please.

8 Q. Sir, you agree with me that a point-to-multipoint LSP is  
9 one tunnel, not two tunnels.

10 A. I'm not sure I'm willing to sign on to the exact wording  
11 of that question. I think it could be two tunnels. I think  
12 it could be one.

13 Q. Sir, would you look at trial transcript on page 544?

14 MR. BENNETT: Objection, Your Honor. Why are we  
15 looking at trial transcripts again? There's no refreshing or  
16 recollection or impeachment going on.

17 THE COURT: I'm assuming there's impeachment about  
18 to go on or about to be tried.

19 Q. (BY MR. HAYNES) Doctor Chatterjee -- sorry. I did it  
20 again.

21 Doctor Valerdi, if you would turn to page 544.

22 A. I'm there.

23 Q. At line 21?

24 A. Could you remind me what part of the trial am I reading a  
25 transcript from?

1 Q. Sure. Sure. This is actually a portion of your trial  
2 testimony from two days ago.

3 A. Thank you.

4 Q. And actually you can actually go to page 545 and begin  
5 reading at line 4. And if you would read down to line 17.

6 A. Okay.

7 Q. Sir, does that refresh your recollection as to whether or  
8 not a P2MP LSP is one tunnel, not two tunnels?

9 A. In the context of the RFC 4875, which is what the  
10 question was bounded by of the part of the transcript that I  
11 just read, yes.

12 Q. Now, you agree that the RFC 4875 standard is the industry  
13 standard that defines how to create point-to-multipoint  
14 tunnels. Right?

15 A. Yes.

16 Q. So in the context of the industry standard that defines  
17 how to create point-to-multipoint LSPs, you agree with me that  
18 a point-to-multipoint LSP is one tunnel, not two tunnels.  
19 Correct?

20 A. In the context of the standard, yes.

21 Q. Okay. And you also agree with me that what you have  
22 accused of infringement in this case as being two tunnels is a  
23 point-to-multipoint LSP. Correct, sir?

24 A. Among other things, yes.

25 Q. At the beginning of Doctor Cole's testimony, there were



1 some questions to him actually characterizing I think what you  
2 talked about, and the question -- do you recall the question  
3 being something like, did you see Doctor Valerdi talk about  
4 the RFC 4875 standard? Do you recall that testimony  
5 generally?

6 A. Yes. I agree that he was asked about what I was opining  
7 about.

8 Q. And his -- do you recall that Doctor Cole said that he  
9 didn't recall you having pointed to the RFC 4875 standard for  
10 infringement purposes. Do you recall that?

11 A. Yes.

12 Q. And you actually -- you seem to be trying really hard to  
13 allege infringement in this case without specifically  
14 referencing the industry standard that defines how Nokia  
15 builds its tunnels. Is that fair?

16 A. I don't know if I'm trying really hard. I don't know  
17 what that means. I can just tell you what my intent was in  
18 the direct, and I remember that I didn't mention in my direct  
19 that particular standard.

20 Q. Right. You intentionally did not mention the RFC 4875  
21 standard that Nokia implements in its products to build  
22 point-to-multipoint tunnels because you know that standard in  
23 draft form was published before the '580 Patent. Correct?

24 A. Yes. That's actually written in the specification of the  
25 standard.

1 Q. So you know that if you had told the jury that the  
2 functionality that you say infringes is exactly the same  
3 functionality in the RFC 4875 standard, that would mean that  
4 if you are correct that it infringes, the patent would be  
5 invalid. Correct, sir?

6 A. Incorrect. You use the word 'exactly', and I disagree  
7 with that characterization.

8 Q. Let me try it this way. If Nokia implements the RFC 4875  
9 standard that you have accused of infringement, and that  
10 standard was published before the '580 Patent, that means the  
11 '580 Patent is not valid. Correct, sir?

12 A. I agree. That's why that standard is mentioned in the  
13 face of the patent. It's known to be in existence already.

14 Q. Now, sir, you did prepare an expert report. We talked  
15 about that a couple of days ago. Right?

16 A. Yes.

17 Q. And you spent hundreds and hundreds of hours analyzing  
18 everything in this case, forming your opinions, and writing  
19 those opinions down in that report. Correct?

20 A. Correct.

21 Q. You would agree with me, sir, that in that report, you  
22 referenced the RFC 4875 standard to support your infringement  
23 positions extensively. Correct?

24 A. I think that's fair.

25 Q. Do you recall that you had an appendix to your report?

1 A. Yes.

2 Q. Do you recall that that appendix was 103 pages long?

3 A. I had multiple -- which one are you talking about?

4 Q. Fair enough. With respect to the '580 Patent, you had  
5 several appendices that were separate for each product. Do  
6 you recall that?

7 A. Yes. That's why I'm not sure which one you're referring  
8 to.

9 Q. It's a fair qualification. With respect to the appendix  
10 you put together for the 7250 product, for example, you recall  
11 that was just over a hundred pages?

12 A. Sure.

13 Q. Do you recall that in that appendix, out of those 103  
14 pages, 47 of those pages cited the RFC 4875 standard?

15 A. I did not do that kind of analysis, but I'm sure -- I'll  
16 trust you that that's true.

17 Q. And so in forming your opinions on infringement in this  
18 case and disclosing them to Nokia before we got to this  
19 courtroom, you agree with me that you relied heavily on the  
20 RFC 4875 standard. Correct?

21 A. I think that's fair, yes.

22 Q. Okay.

23 MR. HAYNES: Let's take a very quick look at DX 34.

24 THE COURT: Counsel, approach the bench while that's  
25 coming up.

1 (The following was had outside the hearing of the  
2 jury.)

3 THE COURT: Mr. Haynes, you've got about 20 minutes  
4 before your trial time runs out. I just want you to be a  
5 aware.

6 MR. HAYNES: Thank you. I appreciate it, Your  
7 Honor.

8 THE COURT: Let's proceed.

9 (The following was had in the presence and hearing  
10 of the jury.)

11 THE COURT: Let's proceed.

12 Q. (BY MR. HAYNES) Doctor Valerdi, do you see DX 34 on the  
13 screen?

14 A. Yes.

15 Q. And you recognize this to be the RFC 4875 standard that  
16 we've been talking about?

17 A. Yes.

18 Q. And you know that this standard was co-authored by an  
19 individual who worked at Alcatel that is now part of Nokia?

20 A. Yes.

21 Q. And you were here for Doctor Cole's testimony when he was  
22 talking about the standard in terms -- the draft version of  
23 the standard in terms of his validity opinions. Do you recall  
24 that?

25 A. Yes.

1 MR. HAYNES: If we could go to DX 34 on page 8.

2 Q. (BY MR. HAYNES) Do you see this figure 1 in the  
3 standard?

4 A. Yes.

5 Q. And that's illustrating a point-to-multipoint LSP in  
6 accordance with the 4875 standard?

7 A. Yes.

8 Q. And you see I've got -- start out at point A and I go  
9 down and then I branch out into a bunch of different paths  
10 that go a bunch of different ways?

11 A. Multipoints, yes.

12 Q. Multipoints. Thank you, sir.

13 What's being shown on this figure, sir, that's one  
14 tunnel. Right?

15 A. According to the standard, yes.

16 Q. And this exact same picture is the picture that Doctor  
17 Cole used when he was talking about the draft standard that he  
18 said did not practice the '580 Patent. Do you recall that?

19 A. I'll take your word for it. I don't remember  
20 this -- that particular analysis, but...

21 Q. Okay.

22 A. That's just my memory, not being focused on this thing.

23 Q. Okay. And you recall that you actually used this exact  
24 figure in your appendix in your expert report and you  
25 color-coded it to show in this figure there were multiple

1 different tunnels in your opinion. Do you recall that?

2 A. I remember using it for my report, yes.

3 Q. Right. And so in your expert report you said that figure  
4 1 was multiple tunnels.

5 MR. BENNETT: Objection, Your Honor. We're talking  
6 about reports versus as opposed to what's been said in trial.  
7 I think we're far afield.

8 THE COURT: I agree. Let's focus on what his live  
9 testimony is unless you're going to try to use some prior  
10 inconsistent statement.

11 Q. (BY MR. HAYNES) Doctor Valerdi, in this case what you  
12 have accused is a point-to-multipoint tunnel just like what's  
13 shown in figure 1. Right?

14 A. Well, to be more complete, the accused products follow  
15 the standard, but they also do a lot more than that. That's  
16 been my opinion the entire time. I don't think you've  
17 challenged that or questioned that. So just to be fair, it's  
18 this standard plus other things that the product does.

19 Q. Sir, you understand that one of the things that the jury  
20 is about to do is determine credibility of witnesses in this  
21 case.

22 A. Yes, I understand that.

23 Q. And you understand that one of the things the Court  
24 instructed at the beginning of this case that the jurors  
25 should do is in assessing credibility is to look at whether a

1 particular witness' statements were consistent or  
2 inconsistent. Do you recall that?

3 A. Yes.

4 Q. And you agree that looking at the consistency of a  
5 person's testimony is something that helps judge credibility.  
6 Right?

7 A. I agree.

8 Q. Okay. You agree, sir, that it's not my job to do that,  
9 not your job to do that; it's actually their job to look at  
10 the consistency of a witness' testimony and evaluate whether  
11 that consistency or inconsistency shows that the witness is  
12 credible or not credible.

13 MR. BENNETT: Your Honor, objection. The Court will  
14 instruct on how to judge credibility.

15 THE COURT: The Court has and the Court will again,  
16 but this is not an improper question. I'll overrule any  
17 objection.

18 You may answer the question.

19 THE WITNESS: Yes, I understand.

20 MR. HAYNES: Okay. I have no further questions,  
21 Your Honor. I pass the witness.

22 THE COURT: All right. Is there redirect,  
23 Mr. Bennett?

24 MR. BENNETT: Briefly, Your Honor.

25 THE COURT: All right. Proceed with redirect.

REDIRECT EXAMINATION

BY MR. BENNETT:

Q. All right. Doctor Valerdi, just really quickly, no one except the lawyers have an insight into the difference between reports and trial testimony, and Mr. Haynes brought up your report several times, so please help the jury understand what's the difference between what you have to do in an expert report and the trial -- the testimony you may present at trial?

A. Yeah. I think the easiest way to think about it is that the reports are this big, long, drawn-out written opinion, much of which never even gets mentioned in trial. So what matters in terms of what we intend to say is what we base our opinion on, what we reviewed, who we talked to, et cetera, but it doesn't mention every page of every detail that we've written about in the past.

Q. Okay. Mr. Haynes asked you several questions about the standard RFC 4875 and your infringement opinion just now, and I want to give you the chance to respond or explain.

Why isn't it inconsistent for you to cite the RFC 4875 in your report but testify here that following that standard has nothing to do or little to do with infringement?

A. The relevance of that standard is that it does instruct how to do certain things, and the patent acknowledges that. I acknowledge that. What I did in my direct was build above and



1 beyond what the standard already teaches to show you what  
2 Nokia's products do to infringe on the claim patents. So it's  
3 not inconsistent to build upon what already exists to show --  
4 look at the improvement. It's above and beyond. It's quite  
5 simple.

6 Q. All right. And let me ask it this way. Earlier Doctor  
7 Chatterjee testified that merely practicing a standard isn't a  
8 guarantee against infringement. Do you remember that?

9 A. Yes.

10 Q. Did you agree with Doctor Chatterjee about that?

11 A. I agree that just practicing the standard is not the  
12 whole story.

13 Q. Right. And does practicing a standard render a company  
14 immune from infringement?

15 A. No.

16 Q. What determines whether a company's products infringe a  
17 patent?

18 A. If they practice the teachings of the claim elements that  
19 are accused.

20 Q. Okay. I want to clear up some confusion.

21 MR. BENNETT: Mr. Jarrett, Joint Exhibit 46a,  
22 please, one more time. Go to page 41. Joint Exhibit 46a,  
23 page 41. That's it. Okay. Yeah; please.

24 Q. (BY MR. BENNETT) So I want to clear up I think some  
25 confusion about what Doctor Chatterjee said and about your

1 infringement opinions, and it has to do with what we're seeing  
2 there, the configuration of the BSA nodes and the BSR.

3 Are you with me?

4 A. Yes.

5 Q. Okay. So there's been a lot of discussion about mesh and  
6 ring. Now, which one matters for purposes of infringement?

7 A. Ring.

8 Q. Okay. And what was it Doctor Chatterjee said today about  
9 those two topologies that mattered for purposes of  
10 infringement?

11 A. He suggested that the configuration here was mesh only  
12 and not ring, and that the ring was only a layer 1 concept and  
13 could not be considered as a layer 2 concept.

14 Q. All right. And so when you testified just a moment ago  
15 about what you were disagreeing with in Doctor Chatterjee's  
16 analysis, what were you focused on?

17 A. That the network shown here is a layer 2 network.

18 Q. Okay. And going back to the two BSRs, why did -- why  
19 does Doctor Chatterjee's discussion about the BSRs different  
20 from yours?

21 A. Because what Chatterjee said is that there was only one  
22 egress node, meaning that there was only one BSR, and as you  
23 can see in this figure there are two BSRs in the infringing  
24 product.

25 Q. And what does that mean for purposes of whether Nokia

1 infringes?

2 A. That it meets the elements of the claim that requires  
3 egress nodes, plural, which is exactly what's shown in Nokia's  
4 technical documentation.

5 Q. Thank you.

6 MR. BENNETT: I'll pass, Your Honor.

7 THE COURT: All right. Any further cross  
8 examination?

9 MR. HAYNES: Nothing further, Your Honor.

10 THE COURT: You may step down, Doctor Valerdi.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 Plaintiff, call your next rebuttal witness.

14 MR. BENNETT: At this time, Your Honor, Plaintiff  
15 rests its rebuttal case.

16 THE COURT: All right. Subject to the Court's final  
17 instructions to the jury and closing arguments, do both  
18 Plaintiff and Defendant rest and close?

19 MR. BENNETT: Yes, Your Honor.

20 MR. HAYNES: Yes, Your Honor.

21 THE COURT: All right. Mr. Bennett, Mr. Haynes,  
22 approach the bench just briefly.

23 (The following was had outside the hearing of the  
24 jury.)

25 THE COURT: We talked earlier about this stipulation

1 that you-all had agreed to. I talked with you about the  
2 possibility of giving it in the final jury instructions or  
3 giving it separately. And looking at it again, I was  
4 concerned with regard to the possibility of including it in  
5 the final jury instructions that it might need to be under  
6 seal; and if it does, I don't want to have to seal the  
7 courtroom in the middle of my final jury instructions.

8 Do you-all agree that it should be given while the  
9 courtroom is under seal?

10 MR. HAYNES: I think we've been working on that  
11 exact issue, Your Honor, and we have a version that can be  
12 read into the public record that will not require sealing.  
13 I believe it's ready.

14 THE COURT: Do you want me to do it now or do it in  
15 the final jury instructions?

16 MR. HAYNES: The final jury instructions is fine.

17 THE COURT: You're both in agreement on that?

18 MR. BENNETT: Yes, Your Honor.

19 THE COURT: I just didn't want to send the jury home  
20 and then have a problem with doing it in the charge tomorrow.

21 MR. HAYNES: I understand. I'll get that handed up  
22 to your clerks as soon --

23 THE COURT: We'll get it in just a minute. Thank  
24 you.

25 (The following was had in the presence and hearing

1 of the jury.)

2 THE COURT: All right, ladies and gentlemen of the  
3 jury, you've now heard all the evidence in this case.

4 There are certain procedural matters that I need to  
5 take up with the parties and their counsel outside of your  
6 presence, and I am about to send you home for the rest of the  
7 day. And what you do with the rest of the day is completely  
8 up to you, so long as you continue to follow all my  
9 instructions, including not to discuss the case among  
10 yourselves or with anyone else in any way.

11 We are getting close to being finished, and it would be  
12 an absolute travesty if any one of you were to disregard those  
13 instructions and jeopardize the entirety of this process. So  
14 please let me remind you again, don't discuss or communicate  
15 with anyone in any way about the case, including the eight of  
16 yourselves.

17 With regard to the matters that I have to take up outside  
18 your presence, I expect to work through those with counsel  
19 over the rest of the afternoon, perhaps into the early  
20 evening. Long story short, I expect to be finished with that  
21 today, so I am going to need you back in the morning. I'm  
22 going to ask you to be here at 8:30 in the morning, as is  
23 typical.

24 Now, without giving you more information than you need,  
25 let me just say that those things I have yet to take up with

1 counsel may take more time than I think, they may go quicker  
2 than I think. It is possible I could be finishing up with  
3 them tomorrow morning. So all of that is to say, I've done a  
4 pretty good job of being ready to start at 8:30 when you were  
5 here at 8:30 during the trial. We're going to have to be  
6 flexible tomorrow morning.

7 I'm going to ask you to be here at 8:30. It is entirely  
8 possible I'll have everything done and wait on 8:30 to get  
9 here to start right on the dot. It is also equally possible I  
10 may still be involved in finishing up these other matters and  
11 it might be 8:45 or even 9:00 before we can start, and you may  
12 have to wait on me. So I just want to be honest with you and  
13 let you know that this part of the process is harder to  
14 quantify than what we've gone through so far.

15 So enjoy the rest of the afternoon. Please be back in  
16 the jury room assembled at 8:30. I will hope that we are  
17 ready to start thereabouts, but if you need to be flexible  
18 with the Court I'll trust that you'll be flexible with the  
19 Court.

20 When we start tomorrow, I will give you my final  
21 instructions on the law that you are to apply to the evidence  
22 that you've heard. These final instructions are, as I  
23 mentioned earlier, often referred to as the Court's charge to  
24 the jury. These final jury instructions are going to be given  
25 to you by me orally, but it's my practice to also have

1 available for you each your own printed copy of those  
2 instructions. So you'll get them in writing; you'll also get  
3 them from me orally.

4 The reason I give them to you in writing is I want you to  
5 listen to me when I give them to you orally and not feel like  
6 you've got to write things down or take notes, understanding  
7 that you'll be able to go back to the printed copy to refresh  
8 or review anything once you retired to the jury room. So you  
9 will get your own printed copy of these final jury  
10 instructions when you retire to the jury room, but I'm going  
11 to give them to you orally and then I'm going to send you back  
12 your own individual written copies when you retire to the jury  
13 room. Again, my hope is that you will focus and listen to me  
14 carefully as I give you these instructions.

15 I take a lot of time with these instructions and I try to  
16 give them as clearly as I can, so it's important that you  
17 follow me orally, and then you'll have the ability to refresh  
18 your recollection or review anything in writing further once  
19 you deliberate.

20 After I've given you my final instructions, the Court's  
21 charge to the jury, then counsel for the competing parties  
22 will present their closing arguments to you. And once you've  
23 heard those closing arguments and both sides have finished  
24 that presentation to you, then I will instruct you to retire  
25 to the jury room and deliberate on your verdict, and I will

1 send back with you not only your own printed copies of the  
2 final jury instructions, but I will send you one clean copy of  
3 the verdict form. And as I've told you, that's a document  
4 containing several questions that you are to answer. That is  
5 also the time once you retire to the jury room that things  
6 change and you go from being prohibited to discussing the  
7 evidence over the course of this trial to being required to  
8 discuss the evidence among yourselves that has been produced  
9 and presented over the course of this trial. And your  
10 requirement to discuss the evidence is so that you can reach a  
11 unanimous decision as to how to answer those questions in that  
12 verdict form.

13 One of the things you will do as soon as you retire to  
14 the jury room to deliberate is choose your foreperson, and  
15 then you will deliberate and come to hopefully unanimous  
16 decisions how to answer the questions in the verdict form.

17 And when you've reached unanimous decisions about all the  
18 questions in the verdict form, then your foreperson will sign  
19 the verdict form and will mark the answers to those questions  
20 reflecting your unanimous agreements. And when that's done  
21 and the foreperson you've selected has signed it and dated it,  
22 you'll tell the Court Security Officer that you've reached a  
23 verdict.

24 So that's what you can look forward to tomorrow once you  
25 get back.



1           Again, please follow all my instructions scrupulously,  
2           and we'll look forward to seeing you in the morning. I will  
3           do my best to be ready to start right at or very close to  
4           8:30. But again, I may have to ask your indulgence with a  
5           little flexibility because, without me going into more detail  
6           than you need to know, some of what I need to do today and  
7           perhaps carry over into tomorrow morning is just hard to  
8           quantify.

9           All right. With that, ladies and gentlemen, please take  
10          your notebooks with you, leave them on the table in the jury  
11          room, travel safely to your homes, travel safely back in the  
12          morning, and with that you're excused until tomorrow morning.

13                 (Whereupon, the jury left the courtroom.)

14                 THE COURT: Be seated, please.

15          Counsel, just for your information, we ended the evidence  
16          with the Plaintiff having an hour and 42 minutes of unused and  
17          remaining trial time and the Defendant having 15 minutes of  
18          unused and remaining trial time.

19          It is a few minutes until 3:00. My inclination is to  
20          take about a 10-minute recess and then return to the bench, at  
21          which time I will hear from either or both parties with regard  
22          to any motions either or both care to offer pursuant to Rule  
23          50(a) of the Federal Rules of Civil Procedure.

24          Those of you that are going to be presenting closing  
25          arguments tomorrow are not required to be here for Rule 50(a)

1 practice or the informal charge conference that will follow.  
2 You're entitled to and welcome to be here, but I suspect you  
3 can use the time to better effect if you are starting your  
4 preparations for your closing arguments tomorrow.

5 Mr. Bennett, can you inform me at this point, do you know  
6 who will be presenting closings for the Plaintiff?

7 MR. BENNETT: I will be, Your Honor.

8 THE COURT: All right. And how about Defendant,  
9 Mr. Dacus?

10 MR. DACUS: I don't think we know yet. I'll be  
11 participating; I don't know if Mr. Haynes will split with me  
12 or not.

13 THE COURT: All right. Mr. Bennett, as you know,  
14 you're entitled to divide your time between the first and  
15 second closing, but you are required to use at least 50  
16 percent or 20 minutes of your time in your first closing  
17 argument.

18 MR. BENNETT: Yes, Your Honor.

19 THE COURT: Also, after I take up and hear and rule  
20 on motions under Rule 50(a), I will conduct an informal charge  
21 conference in chambers where I can review with both sides the  
22 current version and iteration of the final jury instructions  
23 and verdict form.

24 I've looked at your most recent submission. It is much  
25 cleaner than the earlier one, and there really are not too

1 many points of disagreement that we need to go over, so I hope  
2 that the informal charge conference can be effective without  
3 taking too terribly much time.

4 Again, those of you that have appeared in the case,  
5 you're welcome to participate in the informal charge  
6 conference; however, as long as each side has adequate counsel  
7 staffing it, you don't have to have anybody here. In other  
8 words, if you've got one person that's going to carry the  
9 load, the rest of you don't have to be here. If all of you  
10 want to be here, that's fine; I'll leave that up to you.

11 All right. Any questions at this point?

12 MR. BENNETT: Your Honor, Plaintiff asks that its  
13 witnesses be excused.

14 THE COURT: All right. Without objection,  
15 Plaintiff's witnesses are excused. And without objection and  
16 *sua sponte*, any remaining Defendant's witnesses are excused.

17 Anything else we need to cover?

18 MR. BENNETT: Not for Plaintiff, Your Honor.

19 MR. HAYNES: Nothing further for the Defendant, Your  
20 Honor.

21 THE COURT: All right. Let's take about 10 minutes,  
22 and I'll be back and hear rules under Rule 50(a).

23 I will say this, counsel. Mr. Dacus has heard me say  
24 this before. This is a point in the process where it's not  
25 uncommon to have some of the junior members of the trial team

1 present arguments. I welcome that. One of the things I along  
2 with many of my colleagues worry about are opportunities for  
3 young lawyers to learn how to present in open court and on the  
4 record.

5 That being said, please remember I have been here  
6 throughout the entire process. Please do not go to the podium  
7 and look at me with earnest young eyes and say, "Your Honor,  
8 this is a patent case." Try to get to the nub of the matter;  
9 not the hub, but the nub of the matter, as soon as you can.

10 MR. BENNETT: What is a hub?

11 THE COURT: All right, counsel. We stand in recess.

12 (Brief recess.)

13 THE COURT: Be seated, please.

14 Counsel, the Court will now turn to and take up motions  
15 either party may wish to offer pursuant to Rule 50(a) of the  
16 Federal Rules of Civil Procedure.

17 What I would like to do is have each party identify for  
18 me by subject matter what they care to move for relief on as a  
19 matter of law pursuant to Rule 50(a), and once I've heard from  
20 both sides as to what matters they substantively seek relief  
21 on under Rule 50(a), then I'll hear argument related to those  
22 matters. It is often the case, in my experience, that there  
23 are competing motions where simultaneous argument can cover  
24 both sides of the issue, and that's why I like to identify the  
25 subject matter first.

1           So whoever's going to speak for the Plaintiff, please go  
2           to the podium and identify topically for me any matters that  
3           Plaintiff wishes to seek relief on pursuant to Rule 50(a).

4           MR. BREEDLOVE: Your Honor, we have no such motions.

5           THE COURT: All right. Then I'll ask Defendant to  
6           send counsel to the podium and identify for me any motions  
7           under Rule 50(a) the Defendant may care to seek relief upon.

8           MS. DEANE: Thank you, Your Honor. Michael Deane on  
9           behalf of Nokia.

10           We move under Rule 50(a) for a couple of different  
11           reasons. Our first motion under Rule 50(a) will be for no  
12           direct literal infringement. We will, likewise, move under  
13           Rule 50(a) for no indirect infringement, and specifically no  
14           induced infringement. We understand that Plaintiffs have  
15           dropped their claims of contributory infringement, but to the  
16           extent we need to move under Rule 50(a) for non-infringement  
17           under a contributory infringement theory, we do that as well.  
18           But our understanding is that it won't be presented to the  
19           jury.

20           THE COURT: Plaintiffs have dropped their claims  
21           under contributory infringement?

22           MR. BREEDLOVE: That's correct.

23           THE COURT: All right. What else, Mr. Deane?

24           MS. DEANE: Yes, Your Honor.

25           On the topic of invalidity, we move under Rule 50(a) that

1 the claims are invalid for two of the three patents, and  
2 specifically we move on the following: Claim 12 of the '580  
3 Patent under obviousness, claim 15 of the '580 Patent under  
4 obviousness, claim 1 of the '010 Patent under obviousness, and  
5 claim 3 of the '010 under obviousness.

6 THE COURT: All right. And there are no invalidity  
7 challenges to the '599 Patent. Correct?

8 MS. DEANE: That's my understanding, yes, Your  
9 Honor.

10 THE COURT: All right.

11 MS. DEANE: We also move under Rule 50(a) that  
12 NOikia has not willfully infringed any of the claims of the  
13 patents at issue.

14 THE COURT: Let me ask Plaintiff. It was my  
15 understanding that, similar to contributory infringement,  
16 Plaintiff had abandoned the willfulness claim --

17 MR. BREEDLOVE: Correct.

18 THE COURT: -- through the course of the trial.

19 MR. BREEDLOVE: Correct.

20 THE COURT: Do you believe you need relief on it  
21 under Rule 50(a) given that Plaintiffs have abandoned it on  
22 the record?

23 MS. DEANE: I think with that representation we  
24 don't.

25 THE COURT: It's certainly not going to be in the

1 verdict form.

2 MS. DEANE: Yes, Your Honor. Thank you.

3 THE COURT: Okay.

4 MS. DEANE: And we also move under Rule 50(a) that  
5 Plaintiff has failed to mark their products.

6 And we move under Rule 50(a) that Smart Path is not  
7 entitled to damages.

8 And we have a more detailed recitation of each of these  
9 for Your Honor's benefit that my colleagues would like to  
10 present.

11 THE COURT: All right. Well, given that only  
12 Defendant has -- let me make sure. Is that everything  
13 Defendant seeks relief on under Rule 50(a), Mr. Deane?

14 MS. DEANE: Yes, Your Honor.

15 THE COURT: Okay. Given that Plaintiff doesn't have  
16 corresponding motions for relief under Rule 50(a), we'll hear  
17 argument on these matters urged by Defendant.

18 It seems to me we can take them up efficiently in four  
19 discreet categories the motions as relate to the issue of  
20 infringement; the motion as relates to the issue of  
21 invalidity, more particularly obviousness; the motion as  
22 relates to marking, and the marking statute; and then as  
23 relates to the issue of damages.

24 Let me hear Defendant's argument seeking relief under  
25 Rule 50(a) with regard to any of the theories related to the

1 topic of infringement.

2 THE COURT: Thank you, Your Honor.

3 MS. BEATON: Good afternoon.

4 THE COURT: Good afternoon.

5 Would you identify yourself for the record, please?

6 MS. BEATON: My name is Erin Beaton representing the  
7 Nokia Defendants.

8 THE COURT: All right. Let me hear your arguments,  
9 Ms. Beaton.

10 MS. BEATON: Sure.

11 Nokia asks the Court to grant the Defendant's Rule 50(a)  
12 motion of no direct literal infringement. Nokia asks the  
13 Court to grant as a matter of law of no direct literal  
14 infringement of claims 12 and 15 of U.S. Patent No. 7,463,580,  
15 claims 1 and 3 of U.S. Patent No. 7,386,010, and claim 59 of  
16 U.S. Patent No. 7,551,599 as to each of the accused products  
17 in this case.

18 Starting with claims 12 and 15 of the '580 Patent, no  
19 reasonable juror could conclude that Nokia's products  
20 infringe. Doctor Jeffay, Nokia's expert, demonstrated that  
21 Nokia's products do not meet the elements requiring  
22 resource-sharing groups or an allocation of a resource among  
23 multiple tunnels. Based on that evidence alone, no reasonable  
24 juror could conclude that Nokia's products literally infringe  
25 claims 12 and 15 of the '580 Patent.



1           Additionally, Smart Path failed to meet its burden to  
2           prove infringement of these claims.

3           For claims 1 and 3 of the '010 Patent, no reasonable  
4           juror could conclude that Nokia's products infringe because  
5           the evidence that was presented at trial demonstrated that  
6           Nokia's products are not hubs. Doctor Jeffay, Nokia's expert,  
7           demonstrated that Nokia's products do not include one network  
8           port for communicating with the ports of the hub via a network  
9           in accordance with the packet-oriented layer 2 communication  
10          protocol. The evidence further demonstrates that Nokia's  
11          products do not direct the data frames received from two or  
12          more native interfaces to one of the ports of the hub.

13          The evidence demonstrates that Nokia's routers and  
14          switches are not an apparatus for data communications  
15          comprising a hub and a plurality of edge devices. For  
16          example, the evidence presented at trial does not suggest  
17          that a single router or switch can be three devices. For  
18          example, the evidence demonstrates that Nokia's products are  
19          routers and switches, not hubs. Smart Path's expert Doctor  
20          Valerdi agreed that hubs, routers, and switches are different  
21          devices.

22          Further, claim 1 requires a hub and at least two edge  
23          devices, a plurality of edge devices. Smart Path has only  
24          identified one alleged hub and one alleged edge device, which  
25          cannot meet the requirements of a hub.

1           The evidence that was presented at trial also  
2 demonstrated that Nokia's products do not map the two or more  
3 native interfaces to different respective virtual local area  
4 networks, VLANs, on the network. The evidence presented at  
5 trial also demonstrates that Nokia's products do not include a  
6 protocol consider converter, which, for example, the evidence  
7 demonstrates that certain accused products, such as the Nokia  
8 7950, enables only ethernet protocol.

9           In addition, Nokia's products are configured in networks  
10 that use a single ethernet layer 2 protocol. The evidence  
11 does not suggest that Nokia's products are configured in a  
12 network with more than one layer 2 protocol.

13           Based on that evidence alone, no reasonable juror could  
14 conclude that Nokia's products literally infringe claims 1 and  
15 3 of the '010 Patent. Additionally, Smart Path failed to meet  
16 its burden to prove infringement of these claims.

17           For claim 59 of the '599 Patent, no reasonable juror  
18 could conclude that Nokia's products infringe. Doctor  
19 Chatterjee, Nokia's expert, presented evidence that  
20 demonstrated that Nokia's products operating in accordance  
21 with a triple play delivery services architecture do not  
22 include a layer 2 ring network and an external layer 3 network  
23 and cannot be configured to operate in a layer 2 ring network.  
24 Nokia's products also do not operate such that the nodes of  
25 the layer 2 ring network define paths to external elements of

1 said layer 3 network through egress nodes of the layer 2 ring  
2 network. Nokia's products also do not operate such that the  
3 nodes of the layer 2 ring network transmit data via selected  
4 paths to external elements of a layer 3 data network.

5 Based on that evidence alone, no reasonable juror could  
6 conclude that Nokia's products literally infringe claim 59 of  
7 the '599 Patent.

8 Additionally, Smart Path failed to meet its burden to  
9 prove infringement of these claims because it adduced no  
10 evidence that any accused products have been configured in a  
11 layer 2 ring network connected to an external layer 3 network,  
12 nor did it adduce any evidence of a layer 2 ring network being  
13 used in the accused triple play architecture.

14 The accused computer readable medium is not capable of  
15 causing the performance of the functions accused of infringing  
16 the recited method steps unless the router is configured by a  
17 customer in the layer 2 ring network.

18 Finally, Nokia moves for judgment as a matter of law  
19 under Rule 50(a) that there has been no infringement under the  
20 doctrine of equivalents as no evidence on this point has been  
21 made in this case.

22 I will continue to indirect infringement.

23 THE COURT: All right. Please do.

24 MS. BEATON: Nokia moves for judgment as a matter of  
25 law under Rule 50(a) that there has been no inducement. Our

1 motion should be granted on inducement. Nokia has not  
2 actively induced infringement, and no reasonable jury could  
3 find otherwise. Thus, Nokia is entitled to judgment as a  
4 matter of law as to no inducement for all the asserted claims  
5 of the asserted patents.

6 For the jury to render a verdict of induced infringement,  
7 they would have to find that there's an underlying act of  
8 direct infringement that Nokia knew of the patents and that  
9 Nokia knowingly induced the infringing acts, and Nokia  
10 possessed a specific intent to encourage another's  
11 infringement of the patents, such as Nokia's customers. At  
12 least three of those requirements have not been shown and no  
13 reasonable jury could find otherwise.

14 First, Smart Path has not proved an underlying act of  
15 direct infringement by a Nokia customer. There is no evidence  
16 of any customer configuration in this case.

17 Second, there's no evidence that Nokia had knowledge of  
18 the patents to induce infringement.

19 Third, Nokia did not knowingly induce any infringing  
20 acts.

21 Fourth, there is no evidence at all that Nokia possessed  
22 a specific intent to encourage another's infringement of the  
23 patents. Multiple witnesses testified that there are multiple  
24 ways to configure the products, and for each of those reasons,  
25 Nokia is entitled to judgment as a matter of law of no

1 inducement.

2 Finally, to the extent Smart Path has not voluntarily  
3 withdrawn allegations of -- skip that part.

4 THE COURT: What else?

5 MS. BEATON: Nokia moves for judgment as a matter of  
6 law as to indirect infringement of no indirect infringement.

7 THE COURT: All right. Anything else related to the  
8 issue of infringement, counsel?

9 MS. BEATON: No, Your Honor.

10 THE COURT: All right. I'd like to hear a response  
11 from the Defendant, please--excuse me--from the Plaintiff.

12 MR. BREEDLOVE: Your Honor, can we divide up between  
13 patents?

14 THE COURT: You can split the duties any way you'd  
15 like to as long as it's covered.

16 MS. RITZER: Good afternoon. Alexis Ritzer on  
17 behalf of Plaintiff Smart Path.

18 THE COURT: Please proceed.

19 MS. RITZER: Thank you.

20 So our position is that a reasonable jury could find in  
21 Smart Path's favor on infringement. Specifically, I'm up here  
22 to talk about the a '599.

23 We heard today that though Nokia disputes that the  
24 accused products are computer software products able to  
25 receive egress from a layer 2 network, and that Nokia does not

1 define paths to layer 3 network elements, they presented  
2 little to no source code rebuttal. And this is a computer  
3 software product, so source code is pretty important. Neither  
4 of Nokia's experts were able to rebut Doctor Valerdi's  
5 analysis of the source code that shows that the accused  
6 products meet these claim elements.

7 As we've discussed throughout the case, again, the source  
8 code is what determines how the accused products function and  
9 what they are capable of accomplishing, and there's nothing in  
10 the source code that has been put into evidence that  
11 contradicts those assertions. Instead, Nokia just attempts on  
12 -- to rely on product guides to prove their case; but again,  
13 product guides only describe the product and they are not the  
14 actual products. So I believe that both Nokia's experts  
15 testified that they reviewed the source code, but still  
16 provide an analysis of that source code to show that they do  
17 not infringe on the '599 Patent.

18 So I think it's misleading at best to rely on those  
19 guides as definitive proof that the product works in the way  
20 that Nokia interprets the guides, so in regards to that, a  
21 reasonable jury could easily find in favor of Smart Path.

22 With regard to the assertion that the accused products do  
23 not receive egress from a layer 2 ring network, we know that,  
24 as Doctor Valerdi explained several times, that the VPLS is a  
25 layer 2 infrastructure. The figure that both parties rely on

1 in JX 46a on page 41 with the red ring specifically says that  
2 the red ring is a secure VPLS infrastructure, and that's not  
3 in dispute. Both Doctor Chatterjee and Doctor Valerdi admit  
4 that VPLS is a layer 2 infrastructure and it is in a ring  
5 structure on that figure.

6 The products are well-understood to support ethernet  
7 rings, which are layer 2 ring networks, so even though Doctor  
8 Chatterjee attempts to say that there are no connections  
9 between the different nodes of the rings, as a ring is set up  
10 in a hub and spoke topology, to the extent that that is true  
11 for that specific figure, JX 46a also describes that the  
12 topology will work with a -- the ring -- a layer 2 ring  
13 topology and a hub and spoke topology will either -- either  
14 will work with a VPLS infrastructure. And Doctor Chatterjee  
15 admitted that both topologies work with a VPLS infrastructure.

16 And, in fact, looking at the figure, there are dotted  
17 lines for the quoted hub and spoke representation. That  
18 indicates that that's different from the solid lines of the  
19 ring indicating that either topology is possible.

20 If the ring did not indicate connections between the  
21 different nodes, but, instead, indicated that everything  
22 within the ring orientation was part of the VPLS network, why  
23 wouldn't you just put a circle around all of the products?  
24 Why connect them individually?

25 So for that reason, we also believe that a reasonable

1 juror could find in favor of Smart Path for infringement.

2 Lastly, the paths to the layer 3 network elements, the  
3 products wouldn't have a reason to exist without the paths to  
4 the layer 3 network elements. There's no point to connect  
5 just on the layer 2 or layer 1 network -- or protocol. Nokia  
6 takes advantage of the fact that the paths are not explicitly  
7 indicated on the figures, and so that is a bit of a  
8 misrepresentation of what their products are capable of  
9 accomplishing.

10 And Doctor Chatterjee had mentioned this morning about  
11 what it means for the BSR specifically to terminate layer 2  
12 networks. And it's been taken out of context. When you  
13 terminate a layer 2 network, it means that the data is being  
14 taken out at the layer 2 frames and repackaged into layer 3  
15 frames. So it's going from an internal layer 2 network into  
16 an external layer 3 network. So layer 2 paths are terminated  
17 because data is moving from layer 2 network to layer 3  
18 network, which is the whole purpose of having a BSR in Nokia's  
19 products to begin with.

20 So with that, Smart Path opposes Nokia's motion with  
21 respect to the '599.

22 THE COURT: All right. Other argument with regard  
23 to the topic of infringement from Plaintiff?

24 MR. BREEDLOVE: Yes, Your Honor.

25 I'll start with the '580 Patent.



1 THE COURT: Go ahead, Mr. Breedlove.

2 MR. BREEDLOVE: We believe that there's a jury  
3 question on infringement, both direct and indirect, based on  
4 the Nokia documents -- Nokia manuals and the source code and  
5 the testimony of Doctor Valerdi alone creates enough of a fact  
6 issue. Their rebuttal to that through Doctor Jeffay had to do  
7 with no sharing of resources among tunnels, I believe was the  
8 summary of his position, and that argument depends entirely on  
9 their argument that Smart Path's identification of a first and  
10 second tunnel is actually the same tunnel. But there was  
11 evidence from Joint Exhibit 10d at page 1,693 that shows these  
12 S2Ls each called a sub-LSP, they are modeled as a  
13 point-to-point LSP in the control plane, and we heard some  
14 today about the significance of what that means.

15 I think there's a fundamental error in the rebuttal  
16 argument from Nokia which in a sense assumes that  
17 implementation of a standard--recall this is the patent that  
18 has something to do with the 4875 standard--that the  
19 implementation of a standard necessarily dictates everything  
20 about the product that incorporates that standard. But, in  
21 fact, there are numerous ways to incorporate a standard.

22 In this case we have plenty of evidence about how Nokia  
23 implemented that standard, the source code being extremely  
24 useful and we would even say dispositive, and Doctor Valerdi  
25 presented evidence about that and showed how they do, indeed,

1 have first and second tunnels, and the sharing of resources  
2 between those.

3 As far as -- well, let me grab the patents real quick.

4 THE COURT: All right.

5 MR. BREEDLOVE: With respect to the '580, Your  
6 Honor, those claims are about -- claim 12 is one of the  
7 asserted claims. That's a network element. Claim 15 is a  
8 computer software product used in a network element. These  
9 are things that are infringed as soon as the product is  
10 completed by Nokia. They do not need to be put into use, they  
11 do not need to be flipped on before they infringed, nor do  
12 they need to be -- nor do you need to select this  
13 configuration or that configuration; they infringe from the  
14 word go once they are programmed with the source code  
15 according to the claims.

16 So indirect infringement for the '580 we believe is  
17 a -- is easily established and certainly a question that the  
18 jury should address.

19 I want to move onto the '010, which is a different issue  
20 in that regard. That -- this one the claims do -- are talking  
21 about an apparatus that comprises a hub and then a plurality  
22 of edge devices. Most of the claim is talking about the  
23 plurality of edge devices. And we have shown in the Nokia  
24 manuals where it's described how to set up an apparatus just  
25 like this, and those types of manuals that encourage and teach

1 these kinds of setups support indirect infringement through  
2 inducement.

3 As far as the direct infringement, their case came down  
4 to a very restrictive claim construction that they proposed  
5 through their expert of the word 'hub', and that is overly  
6 restrictive. Doctor Jeffay's presentation really relied on  
7 names of products; overly relied on names of products. The  
8 name of a product does not dictate whether it is a certain  
9 type of device as claimed in the '010.

10 For example, if the routers that we saw in the Nokia  
11 documentation, if those were called hubs, that would not  
12 suddenly make them hubs under the claim. What matters is how  
13 they function. And in this case this is an apparatus or a  
14 system claim, it's how they function in the system. So that's  
15 why Doctor Valerdi, walking through their systems as they're  
16 described, is so critical.

17 The products that they call routers are, indeed, exactly  
18 what the claim is referring to as a hub when they're in the  
19 system, as the Nokia documents describe it. They have the  
20 plurality of ports, which are configured to receive and  
21 transmit data frames in accordance with a packet-oriented  
22 layer 2 communication protocol. See, this hub is contemplated  
23 by the claim itself to be part of this layer 2 system. We  
24 heard from Doctor Jeffay that the type of hub he was talking  
25 ability, like a dumb hub, is really not involved in

1 communication and is a layer 1 type of device, which really  
2 isn't consistent with this claim talking about layer 2  
3 communication.

4 We see a little bit later in the claim it talks about at  
5 least one network port on these edge devices for communicating  
6 with the ports of the hub, so there's actually communication  
7 going on here, and that's via a network in accordance with the  
8 packet orient layer 2 communication protocol. So there's  
9 communication going on.

10 Closer to the end of the claim it talks about the edge  
11 devices are configured to direct the data frames received from  
12 two or more of the native interfaces to one of the ports of  
13 the hub, and that's the way the routers work, according to  
14 Doctor Valerdi. That's the way a router can work in a system  
15 that's displayed in Nokia manuals.

16 So these things called routers in the Nokia documents  
17 perform and constitute a hub, as that term is used in the  
18 claim.

19 And so for this reason, Doctor Valerdi's evidence and  
20 the manuals and the source code that was discussed support  
21 direct literal infringement of the '010 Patent through the  
22 accused products.

23 THE COURT: Anything further?

24 MR. BREEDLOVE: Nothing further, Your Honor.

25 THE COURT: Anything further from Defendants on the

1 topic of infringement?

2 If not, we'll move on--excuse me--from Plaintiff on the  
3 topic of infringement.

4 MR. BREEDLOVE: No, Your Honor.

5 THE COURT: Okay. Then let's move onto the topic of  
6 invalidity with regard specifically to the '580 and the '010  
7 Patents.

8 Let me hear argument from the moving Defendant first.

9 MS. KYRAZIS: Good afternoon, Your Honor. Sloane  
10 Kyrakis for Nokia.

11 THE COURT: Good afternoon. Please proceed.

12 MS. KYRAZIS: Nokia moves for judgment as a matter  
13 of law as to invalidity of claims 12 and 15 of the '580 Patent  
14 and claims 1 and 3 of the '010 Patent. Specifically, Nokia  
15 moves for judgment as a matter of law that claims 12 and 15 of  
16 the '580 Patent and claims 1 and 3 of the '010 Patent are  
17 invalid as obvious under 35 U.S.C. § 103.

18 The evidence presented by Nokia demonstrated that each of  
19 the elements of the asserted claims of the '580 Patent were  
20 rendered obvious by the Aggarwal reference alone or in  
21 combination with the RFC 4875 internet draft, which are DX 1  
22 and DX 35 respectively. No reasonable jury could find  
23 otherwise.

24 Dr. Kevin Jeffay testified that each element of claims 12  
25 and 15 were well-known prior to the priority date of December

1 15th, 2005 for the '580 Patent. Doctor Cole admitted that key  
2 elements of the '580 Patent were well-known and failed to  
3 distinguish how these conventional components in combination  
4 were not old.

5 For example, Doctor Cole admitted that the RFC 4875 draft  
6 teaches that S2L, or source-to-leaf, sub-LSPs can share  
7 resources if they are part of the same P2MP, or  
8 point-to-multipoint, LSP, which supports Doctor Jeffay's  
9 conclusion that the asserted claims of the '580 Patent are  
10 obvious under Smart Path's interpretation of the claims.

11 No reasonable jury could find that each of the elements  
12 of the claim were not met by the Aggarwal reference alone or  
13 in combination with the RFC 4875 internet draft.

14 Further, Doctor Jeffay testified that a person of  
15 ordinary skill in the art would have been motivated to combine  
16 Aggarwal with the RFC 4875 internet draft because, for  
17 example, the first named inventor of Aggarwal is Raul  
18 Aggarwal, who was also the first named editor on the RFC 4875  
19 draft.

20 The evidence presented by Nokia demonstrated that each of  
21 the elements of the asserted claims of the '010 Patent were  
22 rendered obvious by the Shah reference, which is DX 4. No  
23 reasonable jury could find otherwise.

24 Dr. Kevin Jeffay also testified that each element of  
25 claims 1 and 3 were well-known prior to the priority date of

1 June 13, 2003, for the '010 patent. Doctor Cole admitted that  
2 key elements of the '0101 Patent were well-known and failed to  
3 distinguish how these conventional components in combination  
4 were not old. For example, Doctor Cole admitted that Shah  
5 teaches an edge device and a hub under Smart Path's  
6 interpretation of the claims, which supports Doctor Jeffay's  
7 conclusion that the asserted claims of the '010 Patent are  
8 obvious under Smart Path's interpretation of the claims.

9 No reasonable jury could find that each of the elements  
10 of the claim were not met by the Shah reference. Accordingly,  
11 Nokia moves for judgment as a matter of law as to these issues  
12 regarding invalidity.

13 THE COURT: All right. Thank you, counsel.

14 MS. KYRAZIS: Thank you, Your Honor.

15 THE COURT: What's the response from Plaintiff?

16 MR. BREEDLOVE: With respect to the '010 Patent and  
17 the Shah reference, Doctor Cole presented evidence for the  
18 jury that's missing elements B, D, and H, which relate to the  
19 edge device, especially the edge devices configured to direct  
20 data frames received from two or more of these native  
21 interfaces.

22 THE COURT: Is something funny going on at the  
23 Defendant's table? All three of you all seem to be on the  
24 verge of laughing out loud.

25 MS. DEANE: No, Your Honor. We apologize.

1 THE COURT: All right. Let's continue.

2 MR. BREEDLOVE: And this is the one where there was  
3 a comparison of figures. And there were some differences  
4 called out between the figures of Shah versus what the claims  
5 require, and we believe that the jury will be able to sort  
6 through those differences and determine that the Defendant  
7 Nokia has not carried their burden of proof by clear and  
8 convincing evidence that those elements were present in Shah.

9 With respect to the '580 Patent and -- sorry. That was  
10 the '010. Sorry. I'm trying to get my notes here.

11 The '580 Patent -- oh, I think I put that under the wrong  
12 patent. That's what it was.

13 So the testimony about Shah missing B, D, and H related  
14 to the hub and the edge devices. That's, of course, relating  
15 to the '010 Patent.

16 So with respect to the '580 --

17 THE COURT: '580 were the combination of two  
18 references; the '010 was a single reference theory.

19 MR. BREEDLOVE: Right. I'm trying to find my notes  
20 on that.

21 But with respect to the combination of those references,  
22 there was testimony about why it would not have been obvious  
23 to combine them, Aggarwal and the RFC, and the fact that they  
24 both have a primary author of Aggarwal I don't think is  
25 particularly relevant to whether a person of ordinary skill



1 would combine them. If it is relevant, I would think it would  
2 be more for the reason that Doctor Cole described, which is  
3 here you have the same author that did not combine them prior  
4 to the invention of Orckit reflected in the patent. And so  
5 the jury should be entitled to consider whether there would  
6 have been a motivation to combine the references and whether  
7 that combination would have disclosed all of the claim  
8 elements.

9 And I think that concludes our argument on the  
10 obviousness issues.

11 THE COURT: All right. Thank you, counsel.

12 MR. BREEDLOVE: Uh-huh.

13 THE COURT: Let's turn to the marking defense.

14 And let me hear argument from the moving Defendant first.

15 MS. SUBASHI: Good afternoon, Your Honor. Darlena  
16 Subashi for Nokia.

17 THE COURT: Good afternoon.

18 MS. SUBASHI: Nokia moves for judgment as a matter  
19 of law under Rule 50(a) that Smart Path has failed to show  
20 compliance with 35 U.S.C. § 287.

21 Pursuant to 35 U.S.C. § 287(a), a patentee who makes or  
22 sells a patented article must mark his articles or notify  
23 infringers of his patent in order to recover pre-suit damages.  
24 If a patentee who makes, sells, offers for sales, or imports  
25 his patented articles, has not given notice of his rights by

1 marking his articles pursuant to the marking statute, he is  
2 not entitled to damages before the date of actual notice.

3 THE COURT: Counsel, I've read the marking statute  
4 many, many times. You don't need to recite it to me. Give me  
5 your argument on why it applies or doesn't apply.

6 MS. SUBASHI: Thank you, Your Honor.

7 Regarding marking, this Court determined that Nokia met  
8 its initial burden to identify products that it believes  
9 should have been marked. These products included  
10 Orckit-Corrigent's CM-100 and CM-4000 product lines. Thus,  
11 Smart Path bears the burden to establish that the CM-100 and  
12 CM-4000 products complied with the marking statute. Smart  
13 Path failed to meet their burden. For example, Smart Path  
14 failed to show a single document demonstrating that the CM-100  
15 or CM-401x was marked with the asserted patent numbers.

16 Regarding actual notice, § 287 requires an affirmative  
17 act on the part of the patentee which informs the Defendant of  
18 his infringement. The affirmative communication must include  
19 a specific charge of infringement by a specific accused  
20 product or device. Smart Path has failed to identify any  
21 notice that contained a specific charge of infringement.

22 For these reasons and others, no reasonable jury could  
23 award damages--excuse me--could determine that Smart Path has  
24 shown that the prior owners of the asserted patents complied  
25 with 35 U.S.C. § 287(a).

1 THE COURT: All right. Let me hear a responsive  
2 argument from the Plaintiff, please.

3 MS. RITZER: Hello, again. Alexis Ritzer on behalf  
4 of Smart Path.

5 THE COURT: Go ahead, counsel.

6 MS. RITZER: So we believe that Smart Path has met  
7 its burden such that a reasonable jury could find that Smart  
8 Path has adequately marked their products.

9 For instance, the CM-100 and CM-4000 product lines are  
10 the only product lines accused of non-compliance with the  
11 marking statute, and we don't necessarily need documents to  
12 prove that we complied to meet our burden. We have the  
13 testimony of Mr. Izhak Tamir who, first of all, offered into  
14 evidence that there is -- he -- there was no sales of the  
15 CM-100 product line in the U.S. I'm sorry. That the CM-4000  
16 product line was sold in the U.S, there is no evidence that an  
17 unmarked embodying product was offered for sale in the United  
18 States, and that the patents also, in order to fall within the  
19 marking statute, they either have to practice the patents--I'm  
20 sorry--they have to practice the patents or be sold in the  
21 United States. And so Mr. Tamir offered testimony that -- as  
22 president of Orckit-Corrigent that only the CM-100 was sold in  
23 the U.S.

24 So there's also no disputing facts that the CM-4000  
25 products were labeled, and there's no dispute that the CM-100

1 products, they did not practice the patent. Doctor Valerdi  
2 offered extensive testimony as to whether he believed the  
3 CM-100 products practiced, and there was no rebuttal testimony  
4 from either of Nokia's experts despite the fact that they also  
5 had access to the same documents that could indicate whether  
6 or not the CM-100 practiced.

7 So in addition to all of that, Mr. Tamir offered  
8 testimony that he had implemented a policy that all of his  
9 products used marking labels, and Doctor Valerdi testified  
10 that the CM-4000 was adequately marked.

11 In terms of the product that was brought in by Nokia's  
12 counsel that did not have a marking label, Mr. Tamir offered  
13 testimony that said that that was a testing device and had  
14 never been sold in the U.S., and, in fact, that device had  
15 been purchased from counsel outside of Israel.

16 So with that, Smart Path opposes Nokia's motion for  
17 judgment as a matter of law.

18 THE COURT: All right. Thank you.

19 MS. RITZER: Thank you.

20 THE COURT: Let's turn to the issue of damages. Let  
21 me hear from the moving Defendant, please.

22 MS. SUBASHI: Thank you, Your Honor. Darlena  
23 Subashi again.

24 Nokia moves for judgment as a matter of law under Rule  
25 50(a) that no damages should be awarded against Nokia.

1           No reasonable jury could award damages to Smart Path  
2           under 35 U.S.C. § 284. There are numerous flaws in the  
3           methodology applied that would prevent a reasonable jury from  
4           awarding damages to Smart Path.

5           First, Mr. Dell failed to present evidence regarding  
6           several comparable licenses. Ms. Bennis testified as to  
7           several comparable licenses for technologically similar  
8           patents, and Mr. Dell failed to analyze these licenses in  
9           his testimony.

10          Second, Mr. Dell's incremental profit premium analysis  
11          relies on Doctor Cole's apportionment opinions, which are  
12          flawed for numerous reasons.

13          First, Doctor Cole identified a percentage of allegedly  
14          infringing features in Nokia's products without apportioning  
15          the value of those features to the asserted patents. Doctor  
16          Cole did not apportion between the patented features and the  
17          unpatented features, contrary to controlling Federal Circuit  
18          precedent.

19          Doctor Cole explicitly admitted that he did not make any  
20          attempt to assess the value of the improvement of the asserted  
21          patents over what existed in the prior art. Doctor Cole also  
22          admitted that he did not determine the incremental improvement  
23          over other alternatives that existed in the industry at the  
24          time of infringement.

25          Doctor Cole also admitted that within a given feature

1 that he identified, like MPLS or RSVP-TE, he did not try to  
2 determine the relative contribution of the asserted patents as  
3 compared to other contributions of technology to that feature.  
4 Thus, Doctor Cole's apportionment analysis did not determine  
5 the incremental improvement of the asserted patents over the  
6 prior art.

7 Third, Doctor Cole did not perform his own infringement  
8 analysis, and Doctor Cole attributed value to the asserted  
9 patents for features that Doctor Valerdi did not opine  
10 infringe. For example, Doctor Cole attributed value to the  
11 asserted patents for features such as jumbo frames. The  
12 record is devoid of any analysis of how that feature infringes  
13 any of the asserted patents.

14 Further, Mr. Dell's opinions relying on Doctor Cole are  
15 improper. For example, Doctor Cole accused the same features  
16 in the infringing two or more of the asserted patents,  
17 effectively double- and triple-counting the accused features  
18 in his analysis, while he also admitted that there is no way  
19 to attribute more than 100 percent of the value of the  
20 category to an infringing feature.

21 Because Doctor Cole did not separately account for the  
22 respective contributions of each asserted patent, Mr. Dell's  
23 reliance on Doctor Cole results in an aggregated alleged  
24 apportionment that attributes more than 100 percent of the  
25 feature value to the asserted patents.

1           Because Mr. Dell did not perform his own technological  
2   apportionment, all of his opinions regarding the incremental  
3   profit premiums which rely entirely on Doctor Cole's flawed  
4   analysis are unreliable. Therefore, because Mr. Dell's  
5   incremental profit premium analysis is not proper, no  
6   reasonable jury could award Smart Path damages, and the Court  
7   should grant Nokia's motion under Rule 50(a) as to damages.

8           A final flaw in Mr. Dell's methodology is that he failed  
9   to account for the extent of use of the accused features. For  
10   example, Mr. Valley, Nokia's corporate representative,  
11   testified that the software for three of the accused products,  
12   the 7250, the 7210, and the 7705, do not even support the  
13   accused P2MP LSP feature under RFC 4875. Mr. Valley also  
14   testified that Nokia is unaware of any U.S. customer using the  
15   accused P2MP LSP feature.

16           Similarly, Mr. Valley testified that less than 20 percent  
17   of Nokia's routers that are deployed used the accused triple  
18   play service delivery architecture.

19           Finally, Mr. Valley testified that certain products do  
20   not have serial or TDM interfaces, as required by the asserted  
21   claims of the '010 Patent.

22           For this additional reason, because Mr. Dell's analysis  
23   is improper, no reasonable jury could award Smart Path  
24   damages, and because his royalty base is also improper, no  
25   reasonable jury could award Smart Path damages, and the Court

1 should grant Nokia's motion under Rule 50(a) as to damages.

2 Thank you.

3 THE COURT: Thank you, counsel.

4 What's the response from Plaintiff?

5 MS. STAHL: Thank you, Your Honor.

6 THE COURT: Go ahead, Ms. Stahl.

7 MS. STAHL: Plaintiffs have presented sufficient  
8 evidence to have the issue of damages presented to the jury  
9 for a number of reasons.

10 With respect to the four arguments asserted by the  
11 Defendants, Mr. Dell clearly reviewed and considered  
12 comparable licenses and he explained why they were not  
13 economically comparable and, therefore, were excluded from  
14 his analysis. This is simply a disagreement about whether  
15 Ms. Bennis' opinion, when she finally admitted was not -- that  
16 she had performed no economic analysis to have comparability,  
17 but, in any event, both of them have a disagreement about what  
18 are comparable licenses. That is an issue that can be  
19 resolved by the jury. It is not a fundamental flaw in  
20 Mr. Dell's analysis.

21 There are two approaches to the calculation of  
22 damages--the market approach, which does rely on licenses, and  
23 the analytical approach. And Ms. Bennis admitted on the stand  
24 that the analytical approach is a well-accepted methodology.  
25 They have a disagreement about the inputs to that methodology.



1 Doctor Cole did rely in part on -- I'm sorry. Doctor  
2 Dell did rely on Doctor Cole's assessment or apportionment  
3 analysis, but as the *Xmark* case teaches, apportionment can be  
4 addressed in a variety of ways, including careful selection of  
5 the royalty base to reflect the value added by the patented  
6 feature or by adjustment of the royalty rate so as to discount  
7 the value of the product's non-patented features or through a  
8 combination of both, and that is what has happened in this  
9 case.

10 Doctor Cole performed his technological apportionment  
11 analysis, and then through the analytical approach Mr. Dell  
12 performed a further apportionment because he only attributed  
13 value to the excess profit premium above the aspirational 60  
14 percent profit rate that Nokia testified was its expectation.  
15 He then further apportioned that to divide the value of the  
16 invention and the value of the product as between Nokia and  
17 Smart Path in a 70/30 split based upon Nokia's financial  
18 statements, which called for return on capital investment, and  
19 then through the hypothetical negotiation sliced it an  
20 additional time.

21 So we have apportionment by Doctor Cole and then three  
22 additional apportionments by Mr. Dell which, under *Xmark*, is  
23 an acceptable apportionment analysis and sufficient for this  
24 issue to reach the jury.

25 With respect to infringement, we believe the evidence is

1 clear that Doctor Cole relied on Doctor Valerdi and that there  
2 is no disconnect between those two opinions. The double  
3 counting argument is -- it ignores a fundamental aspect of  
4 Doctor Cole's analysis, frankly. So he is attributing a  
5 feature to only 25 percent of that feature, and so this notion  
6 that more than a hundred percent has been issued I think is  
7 not an accurate assessment of what Doctor Cole did in his  
8 analysis. But in any event, the additional apportionments  
9 by Mr. Dell have adequately addressed any criticism in that  
10 regard.

11 With respect to the extent of use, as we established with  
12 Ms. Bennis, and through Doctor Valerdi who testified very  
13 clearly that the operating system is present and installed on  
14 all of the accused products, the use by the customer doesn't  
15 relate to royalty base; it may be relevant to the value of the  
16 benefits of the accused products, but it isn't a royalty base  
17 issue because Doctor--sorry--Ms. Bennis admitted that the use  
18 here and the party whose use matters is Nokia's use, not use  
19 by their customers.

20 And so there's no violation of the entire market value or  
21 inflation of the royalty base, and the evidence is sufficient,  
22 there's disagreement, as there often is in a trial, but the  
23 evidence is sufficient to allow that issue to go to the jury.

24 THE COURT: All right. Thank you.

25 MS. STAHL: Thank you, Your Honor.

1 THE COURT: All right. Have I failed to hear from  
2 anyone on any of the raised issues pursuant to Rule 50(a)?

3 Anything further from the Defendant?

4 MS. DEANE: No, Your Honor.

5 THE COURT: Anything further from the Plaintiff?

6 MR. BREEDLOVE: No, Your Honor.

7 THE COURT: All right. With regard to the various  
8 matters for which Defendant seeks relief under Rule 50(a),  
9 including the general issues of infringement, invalidity,  
10 marking, and damages, those matters are denied.

11 Plaintiff has not moved for relief under Rule 50(a).

12 This completes the Court's consideration of Rule 50(a).

13 Counsel, it is 4:15. In about 10 or 12 minutes, I  
14 would like to meet with you in chambers where we can turn  
15 our attention to the most current draft of the final jury  
16 instructions and verdict form. This is an informal charge  
17 conference. It's off the record. It's meant to be  
18 free-flowing and informative. And I'll reserve the right to  
19 not only talk to you about the areas where you're in  
20 disagreement, but any other areas where you may be in  
21 agreement that I want to talk to you about.

22 After I've received fulsome input from you through this  
23 informal charge conference as to both the final jury  
24 instruction and the verdict form, then I will take that  
25 information and that input into account, I'll review again

1 those documents, and I'll prepare what I believe to be the  
2 final and appropriate charge to the jury and verdict form. I  
3 will -- it's my intention to work on that this evening, and it  
4 is also my intention to have what I believe to be the  
5 appropriate form of those matters delivered to you by email  
6 early tomorrow morning.

7 I'd like you to be here at 8:00 to go on the record, and  
8 I will then conduct a formal charge conference where we will  
9 walk through both the charge and the verdict form page by  
10 page, and at any point through that process if either party  
11 feels there is a matter that they should object to formally  
12 and on the record in regard to the interest of their clients,  
13 then they'll be given a full opportunity to do that.

14 Once we've reviewed both documents on a page-by-page  
15 basis and I've heard and ruled on any objections, that will  
16 complete the formal charge conference.

17 Any questions?

18 MS. DEANE: No, Your Honor.

19 MR. BREEDLOVE: No, Your Honor.

20 THE COURT: All right. Why don't we take about 10  
21 minutes or less, and whenever you're ready, come find me in  
22 chambers and we'll conduct the informal charge conference.

23 The Court stands in recess.

24 (The proceedings were concluded at 4:15 p.m.)  
25

1 I HEREBY CERTIFY THAT THE FOREGOING IS A  
2 CORRECT TRANSCRIPT FROM THE RECORD OF  
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.  
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES  
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE  
6 COURT AND THE JUDICIAL CONFERENCE OF THE  
7 UNITED STATES.

8  
9 S/Shawn McRoberts 04/04/2024

10 \_\_\_\_\_ DATE \_\_\_\_\_  
11 SHAWN McROBERTS, RMR, CRR  
12 FEDERAL OFFICIAL COURT REPORTER  
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